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## Legislative History – Montana Session Law

Chapter: 342      Session L: 2021

Bill Number: SB 358

### Checklist of Bill History

History and Final Status Sheet



Introduced Bill



Fiscal Note



Third Reading Bill



Final Version of Bill



### House

Committee: Natural Resources

Hearing Date(s): 3/29/21 ✓

Committee Report: 4/1/21 ✓

### Senate

Committee: Natural Resources

Hearing Date(s): 2/24/21 ✓

Committee Report: 2/26/21 ✓

### Conference Committee

Hearing Date(s):

Conference Committee Report:

### Compiler Notes

Compiled by:

Date:

Notes:

*SA Marshall*

*5/23/2024*

**Bill Draft Number:** LC0858**Bill Type - Number:** SB 358**Short Title:** Repeal numeric nutrient standards for water quality**Primary Sponsor:** John Esp (R) SD 30**Chapter Number:** 342**Bill Actions - Current Bill Progress:** Became Law**Bill Action Count:** 57

| Action - Most Recent First                                | Date       | Yes | No | Committee             |
|-----------------------------------------------------------|------------|-----|----|-----------------------|
| Chapter Number Assigned                                   | 04/30/2021 |     |    |                       |
| (S) Signed by Governor                                    | 04/30/2021 |     |    |                       |
| (S) Transmitted to Governor                               | 04/23/2021 |     |    |                       |
| (H) Signed by Speaker                                     | 04/23/2021 |     |    |                       |
| (S) Signed by President                                   | 04/23/2021 |     |    |                       |
| (C) Printed - Enrolled Version Available                  | 04/21/2021 |     |    |                       |
| (S) Returned from Enrolling                               | 04/21/2021 |     |    |                       |
| (S) Fiscal Note Printed                                   | 04/20/2021 |     |    |                       |
| (S) Sent to Enrolling                                     | 04/15/2021 |     |    |                       |
| (S) 3rd Reading Passed as Amended by House                | 04/15/2021 | 48  | 2  |                       |
| (S) Fiscal Note Received                                  | 04/15/2021 |     |    |                       |
| (S) 2nd Reading House Amendments Concurred                | 04/15/2021 | 49  | 1  |                       |
| (S) Scheduled for 2nd Reading                             | 04/15/2021 |     |    |                       |
| (H) Returned to Senate with Amendments                    | 04/13/2021 |     |    |                       |
| (H) 3rd Reading Concurred                                 | 04/13/2021 | 69  | 29 |                       |
| (H) Scheduled for 3rd Reading                             | 04/13/2021 |     |    |                       |
| (C) Printed - New Version Available                       | 04/10/2021 |     |    |                       |
| (H) 2nd Reading Concurred as Amended                      | 04/09/2021 | 72  | 28 |                       |
| (H) 2nd Reading Motion to Amend Carried                   | 04/09/2021 | 72  | 28 |                       |
| (H) Scheduled for 2nd Reading                             | 04/09/2021 |     |    |                       |
| (C) Printed - New Version Available                       | 04/07/2021 |     |    |                       |
| (H) Committee Report--Bill Concurred as Amended           | 04/07/2021 |     |    | (H) Natural Resources |
| (S) Fiscal Note Requested                                 | 04/06/2021 |     |    |                       |
| (H) Committee Executive Action--Bill Concurred as Amended | 04/01/2021 | 10  | 5  | (H) Natural Resources |
| (C) Amendments Available                                  | 04/01/2021 |     |    |                       |
| (H) Hearing                                               | 03/29/2021 |     |    | (H) Natural Resources |
| (H) First Reading                                         | 03/08/2021 |     |    |                       |
| (H) Referred to Committee                                 | 03/08/2021 |     |    | (H) Natural Resources |
| (S) Transmitted to House                                  | 03/02/2021 |     |    |                       |
| (S) 3rd Reading Passed                                    | 03/02/2021 | 33  | 16 |                       |
| (S) Scheduled for 3rd Reading                             | 03/01/2021 |     |    |                       |
| (S) 2nd Reading Passed                                    | 03/01/2021 | 33  | 17 |                       |
| (S) Scheduled for 2nd Reading                             | 03/01/2021 |     |    |                       |
| (S) Committee Report--Bill Passed                         | 02/27/2021 |     |    | (S) Natural Resources |
| (S) Committee Executive Action--Bill Passed               | 02/26/2021 | 9   | 3  | (S) Natural Resources |
| (S) Taken from Table in Committee                         | 02/26/2021 |     |    | (S) Natural Resources |
| (S) Tabled in Committee                                   | 02/24/2021 |     |    | (S) Natural Resources |
| (S) Hearing                                               | 02/24/2021 |     |    | (S) Natural Resources |
| (C) Introduced Bill Text Available Electronically         | 02/24/2021 |     |    |                       |
| (S) Referred to Committee                                 | 02/23/2021 |     |    | (S) Natural Resources |
| (S) First Reading                                         | 02/23/2021 |     |    |                       |
| (S) Introduced                                            | 02/23/2021 |     |    |                       |
| (C) Draft Delivered to Requester                          | 02/23/2021 |     |    |                       |
| (C) Draft Ready for Delivery                              | 02/23/2021 |     |    |                       |
| (C) Executive Director Final Review                       | 02/23/2021 |     |    |                       |
| (C) Draft Ready for Delivery                              | 02/23/2021 |     |    |                       |
| (C) Draft in Assembly                                     | 02/23/2021 |     |    |                       |
| (C) Executive Director Review                             | 02/22/2021 |     |    |                       |
| (C) Bill Draft Text Available Electronically              | 02/22/2021 |     |    |                       |
| (C) Draft in Final Drafter Review                         | 02/22/2021 |     |    |                       |
| (C) Draft in Input/Proofing                               | 02/21/2021 |     |    |                       |
| (C) Draft to Drafter - Edit Review                        | 02/20/2021 |     |    |                       |
| (C) Draft in Edit                                         | 02/18/2021 |     |    |                       |
| (C) Draft in Legal Review                                 | 02/17/2021 |     |    |                       |
| (C) Draft Taken Off Hold                                  | 02/17/2021 |     |    |                       |
| (C) Draft On Hold                                         | 01/18/2021 |     |    |                       |
| (C) Draft Request Received                                | 11/08/2020 |     |    |                       |

**Sponsor, etc.**

| Sponsor, etc.       | Last Name/Organization | First Name Mi |
|---------------------|------------------------|---------------|
| Requester           | Cuffe                  | Mike          |
| Drafter             | Mohr                   | Jason         |
| Primary Sponsor Esp |                        | John          |



Subjects

| Description                              | Revenue/Approp. | Vote Majority Req. | Subject Code |
|------------------------------------------|-----------------|--------------------|--------------|
| Administrative Rules; Revision or Repeal | Simple          |                    | AR           |
| Environmental Protection                 | Simple          |                    | ENVP         |
| Rule Making                              | Simple          |                    | RUL          |
| Water                                    | Simple          |                    | WAT          |

Additional Bill Information

Fiscal Note Probable: No  
Preintroduction Required: N  
Session Law Ch. Number: 342  
DEADLINE  
Category: General Bills  
Transmittal Date: 03/02/2021  
Return (with 2nd house amendments) Date: 04/20/2021

Section Effective Dates

Section(s) Effective Date Date Qualified  
All Sections 30-APR-21



AN ACT ELIMINATING NUTRIENT CRITERIA FROM MONTANA WATER QUALITY STANDARDS; ELIMINATING VARIANCES AND COMPLIANCE SCHEDULES FOR NUTRIENTS; DIRECTING ADOPTION AND AMENDMENT OF ADMINISTRATIVE RULES; PROVIDING FOR A TRANSITION FOR NUTRIENT STANDARDS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-5-103, 75-5-105, 75-5-317, AND 75-5-320, MCA; REPEALING SECTIONS 75-5-313, 75-5-314, AND 75-5-319, MCA; REPEALING ARM 17.30.660; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1. Transition for nutrient standards.** (1) By March 1, 2022, the department of environmental quality shall adopt rules related to narrative nutrient standards in consultation with the nutrient work group.

(2) The rules shall provide for the development of an adaptive management program which provides for an incremental watershed approach for protecting and maintaining water quality, and that:

- (a) reasonably balances all factors impacting a water body;
- (b) prioritizes the minimization of phosphorus, taking into account site-specific conditions; and
- (c) identifies the appropriate response variables affected by nutrients and associated impact thresholds in accordance with the beneficial uses of the waterbody.

(3) In developing the rules in subsection (2), the department shall consider options pertaining to whether the point source is new or existing and whether the receiving water body is considered impaired or unimpaired.

**Section 2. Transition for nutrient standards -- department.** (1) Until final rules are adopted pursuant to [section 1], the department shall administer the discharge permitting program under 75-5-402 in a

manner consistent with ARM 17.30.637 and the intent of [this act].

(2) Any nutrient standards variances currently authorized and effective are hereby authorized and effective under 75-5-320 until otherwise amended or repealed.

**Section 3. Board to amend rules.** The board of environmental review shall amend ARM 17.30.201, 17.30.507, 17.30.516, 17.30.602, 17.30.619, 17.30.622, 17.30.623, 17.30.624, 17.30.625, 17.30.626, 17.30.627, 17.30.628, 17.30.629, 17.30.635, 17.30.702, and 17.30.715 to delete all references to department circular DEQ-12A, department circular DEQ-12B, base numeric nutrient standards, and nutrient standards variances.

**Section 4. Department to amend rules.** The department of environmental quality shall amend ARM 17.30.602 to delete all references to department circular DEQ-12A, department circular DEQ-12B, base numeric nutrient standards, and nutrient standards variances.

**Section 5.** Section 75-5-103, MCA, is amended to read:

**"75-5-103. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Associated supporting infrastructure" means:
  - (a) electric transmission and distribution facilities;
  - (b) pipeline facilities;
  - (c) aboveground ponds and reservoirs and underground storage reservoirs;
  - (d) rail transportation;
  - (e) aqueducts and diversion dams;
  - (f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or
  - (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

~~(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface~~

~~water that are adopted to protect the designated uses of a surface water body.~~

~~(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.~~

~~(3)(2)~~ "Board" means the board of environmental review provided for in 2-15-3502.

~~(4)(3)~~ "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(5)(4)~~ "Council" means the water pollution control advisory council provided for in 2-15-2107.

~~(6)(5)~~ (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(7)(6)~~ "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(8)(7)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

~~(9)(8)~~ "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(10)(9)~~ "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

~~(11)(10)~~ (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

- (i) generating electricity;
- (ii) producing gas derived from coal;
- (iii) producing liquid hydrocarbon products;
- (iv) refining crude oil or natural gas;
- (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;
- (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant

to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(12)~~(11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(13)~~(12) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

~~(14)~~(13) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

~~(15)~~(14) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(16)~~(15) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

~~(17)~~(16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

~~(18)~~ (17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

~~(19)~~(18) "Local department of health" means the staff, including health officers, employed by a county,

city, city-county, or district board of health.

~~(20)~~(19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(21)~~(20) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

~~(22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.~~

~~(23)~~(21) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of nutrient standards variances, and the implementation of those standards, and variances together with associated economic impacts.

~~(24)~~(22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(25)~~(23) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

~~(26)~~(24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(27)~~(25) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(28)~~(26) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(29)~~(27) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(30)~~(28) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the board under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221.

(c) Contamination referred to in subsection ~~(30)(b)(iii)~~ (28)(b)(iii) does not require a mixing zone.

~~(31)~~(29) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(32)~~(30) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(33)~~(31) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of



the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(34)~~(32) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

- (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or
- (ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(35)~~(33) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(36)~~(34) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

- (a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or
- (b) documented adverse pollution trends.

~~(37)~~(35) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

~~(38)~~(36) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(39)~~(37) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

~~(40)~~(38) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and

practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(41)~~(39) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

~~(42)~~(40) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704.

**75-5-103. (Effective on occurrence of contingency) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Associated supporting infrastructure" means:
  - (a) electric transmission and distribution facilities;
  - (b) pipeline facilities;
  - (c) aboveground ponds and reservoirs and underground storage reservoirs;
  - (d) rail transportation;
  - (e) aqueducts and diversion dams;
  - (f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or
  - (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.
- ~~(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface water that are adopted to protect the designated uses of a surface water body.~~
  - ~~(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.~~
- ~~(3)~~(2) "Board" means the board of environmental review provided for in 2-15-3502.
- ~~(4)~~(3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.
- ~~(5)~~(4) "Council" means the water pollution control advisory council provided for in 2-15-2107.
- ~~(6)~~(5) (a) "Currently available data" means data that is readily available to the department at the time

a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(7)(6)~~ "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(8)(7)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

~~(9)(8)~~ "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(10)(9)~~ "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

~~(11)(10)~~ (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

- (i) generating electricity;
- (ii) producing gas derived from coal;
- (iii) producing liquid hydrocarbon products;
- (iv) refining crude oil or natural gas;
- (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;
- (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or
- (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(12)(11)~~ "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(13)(12)~~ "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by

the board's classification rules; and

(b) surface waters that:

- (i) are not capable of supporting any one of the designated uses for their classification; or
- (ii) have zero flow or surface expression for more than 270 days during most years.

~~(14)~~(13) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

~~(15)~~(14) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(16)~~(15) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

~~(17)~~(16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

~~(18)~~(17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

~~(19)~~(18) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(20)~~(19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(21)~~(20) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

~~(22)~~ "Nutrient standards variance" means numeric water quality criteria for nutrients based on a

determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.

~~(23)~~(21) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of nutrient standards variances, and the implementation of those standards, and variances together with associated economic impacts.

~~(24)~~(22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(25)~~(23) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

~~(26)~~(24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(27)~~(25) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(28)~~(26) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(29)~~(27) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(30)~~(28) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating

to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the board under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1;

(iv) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221;

(c) Contamination referred to in subsections ~~(30)(b)(iii) and (30)(b)(iv)~~ (28)(b)(iii) and (28)(b)(iv) does not require a mixing zone.

~~(31)(29)~~ "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(32)(30)~~ "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(33)(31)~~ "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(34)(32)~~ (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(35)~~(33) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(36)~~(34) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

~~(37)~~(35) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

~~(38)~~(36) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(39)~~(37) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

~~(40)~~(38) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(41)~~(39) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

~~(42)~~(40) "Watershed advisory group" means a group of individuals who wish to participate in an

advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704."

**Section 6.** Section 75-5-105, MCA, is amended to read:

**"75-5-105. Confidentiality of records.** Except as provided in 80-15-108, any information concerning sources of pollution that is furnished to the board or department or that is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to remain confidential. The department must be served in the action and may intervene as a party. Any information not intended to be public when submitted to the board or department must be submitted in writing and clearly marked as confidential. ~~Except as provided in 75-5-314, the~~ The data describing physical and chemical characteristics of a waste discharged to state waters may not be considered confidential. The board may use any information in compiling or publishing analyses or summaries relating to water pollution if the analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information that is otherwise made confidential by this section."

**Section 7.** Section 75-5-317, MCA, is amended to read:

**"75-5-317. Nonsignificant activities.** (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

- (a) existing activities that are nonpoint sources of pollution as of April 29, 1993;
- (b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;



- (c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;
- (d) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;
- (e) changes in existing ground water quality resulting from treatment of a public water supply system, as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar means that is designed to protect the public health or the environment and that is approved, authorized, or required by the department;
- (f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department-approved water quality protection practices and if no discharge to surface water will occur;
- (g) short-term changes in existing water quality resulting from activities authorized by the department pursuant to 75-5-308;
- (h) land application of animal waste, domestic septage, or waste from public sewage treatment systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;
- (i) use of gray water, as defined in 75-5-325, from nonpublic gray water reuse systems for irrigation during the growing season in accordance with gray water reuse rules adopted pursuant to 75-5-305;
- (j) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and constructed in accordance with Title 75, chapter 6;
- (k) discharges of water to ground water from water well or monitoring well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in accordance with department-approved water quality protection practices;
- (l) oil and gas drilling, production, abandonment, plugging, and restoration activities that do not result in discharges to surface water and that are performed in accordance with Title 82, chapter 10, or Title 82, chapter 11;

(m) short-term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to:

- (i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;
- (ii) fording of streams or other bodies of water by vehicular or other means; and
- (iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;

(n) coal and uranium prospecting that does not result in a discharge to surface water, that does not involve a test pit located in surface water or that may affect surface water, and that is performed in accordance with Title 82, chapter 4;

(o) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;

(p) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;

(q) metallic and nonmetallic mineral exploration that does not result in a discharge to surface water and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;

(r) stream-related construction projects or stream enhancement projects that result in temporary changes to water quality but do not result in long-term detrimental effects and that have been authorized pursuant to 75-5-318;

(s) diversions or withdrawals of water established and recognized under Title 85, chapter 2;

(t) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that are related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short term; ~~and~~

(u) discharges of total phosphorus or total nitrogen that do not:

(i) create conditions that are toxic or harmful to human, animal, plant, and aquatic life;

(ii) create conditions that produce undesirable aquatic life; or

(iii) cause measurable changes in aquatic life; and

~~(u)(v) any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c)~~

~~(u) any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301 (5)(c)."~~

**Section 8.** Section 75-5-320, MCA, is amended to read:

**"75-5-320. Temporary water quality standards variances.** (1) Except as provided in 75-5-222(2) and ~~75-5-313~~, the department may adopt rules providing criteria and procedures for the department to issue a temporary variance to water quality standards if:

- (a) a variance will not result in a lowering of currently attained, ambient water quality;
  - (b) the department rules are consistent, as necessary, with federal rules that authorize states to adopt variances from standards, including but not limited to 40 CFR 131.14; and
  - (c) (i) a permittee cannot reasonably expect to meet a water quality standard during the permit term for which the variance is approved; and
    - (ii) a permit compliance schedule is not feasible to preclude the need for a variance during the permit term for which the variance is approved.
- (2) In order to receive a temporary variance, a permittee shall evaluate facility operations and infrastructure to maximize pollutant reduction through an optimization study. The variance must require the implementation of optimization study actions as terms and conditions of the discharge permit.
- (3) The department shall review a temporary variance issued pursuant to this section at least once every 5 years and may continue, modify, or terminate the temporary variance as a result of the review."

**Section 9. Repealer.** The following sections of the Montana Code Annotated are repealed:

- 75-5-313. Nutrient standards variances -- individual, general, and alternative.
- 75-5-314. Confidentiality of base numeric standards and nutrient standards variances.
- 75-5-319. Compliance schedule for base numeric nutrient standards.

**Section 10. Repealer.** ARM 17.30.660 is repealed.

**Section 9. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 75, chapter 5, and the provisions of Title 75, chapter 5, apply to [sections 1 and 2].

**Section 10. Saving clause.** [This act] does not affect nutrient standards variances granted before [the effective date of this act], or rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 11. Effective date.** [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,  
SB 358, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

SENATE BILL NO. 358

INTRODUCED BY J. ESP, M. CUFFE

AN ACT ELIMINATING NUTRIENT CRITERIA FROM MONTANA WATER QUALITY STANDARDS; ELIMINATING VARIANCES AND COMPLIANCE SCHEDULES FOR NUTRIENTS; DIRECTING ADOPTION AND AMENDMENT OF ADMINISTRATIVE RULES; PROVIDING FOR A TRANSITION FOR NUTRIENT STANDARDS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-5-103, 75-5-105, 75-5-301, 75-5-317, AND 75-5-320, MCA; AND REPEALING SECTIONS 75-5-313, 75-5-314, AND 75-5-319, MCA; REPEALING ARM 17.30.660; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

## SENATE BILL NO. 358

INTRODUCED BY J. ESP

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING NUTRIENT CRITERIA FROM MONTANA WATER QUALITY STANDARDS; ELIMINATING VARIANCES AND COMPLIANCE SCHEDULES FOR NUTRIENTS; DIRECTING ADOPTION AND AMENDMENT OF ADMINISTRATIVE RULES; PROVIDING FOR A TRANSITION FOR NUTRIENT STANDARDS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-5-103, 75-5-105, 75-5-301, 75-5-317, AND 75-5-320, MCA; AND REPEALING SECTIONS 75-5-313, 75-5-314, AND 75-5-319, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Transition for nutrient standards -- board of environmental review.**

The board of environmental rule shall adopt rules related to nutrient standards in consultation with the department of environmental quality and the nutrient work group including:

- (1) defining the terms "undesirable aquatic life" and "harmful" in a manner consistent with 75-5-301;
- (2) developing an adaptive management program that provides an incremental approach for restoration and preservation of water quality in streams impaired by nutrients;
- (3) developing implementation guidance that:
  - (a) applies water quality effluent limitations for nutrients, either nitrogen or phosphorus;
  - (b) considers reasonable potential for total phosphorus and nitrogen after a full mixing of the discharge with the minimum 14-day average streamflow that occurs once every 5 years in the receiving water body;
  - (c) for existing dischargers, considers reasonable potential based on the algae level specified in 75-5-301;
  - (d) for new dischargers, including existing dischargers with an increased source, considers reasonable potential based on the following:
    - (i) for discharges within the level III ecoregion as designated by the U.S. environmental protection

agency that includes the northern Rocky Mountains, Canadian Rocky Mountains, Idaho batholith, middle Rocky Mountains, except for the level IV ecoregion of the Absaroka-Gallatin volcanic mountains:

(A) total phosphorus concentrations of 0.03 milligrams per liter; and

(B) total nitrogen concentrations of 0.8 milligrams per liter;

(ii) for discharges within the level III ecoregion as designated by the U.S. environmental protection agency that includes the northwestern glaciated plains, northwestern great plains, and Wyoming basin, excluding the level IV ecoregions of the sweetgrass uplands, Milk River pothole uplands, Rocky Mountain front foothill potholes, foothill grasslands, river breaks, non-calcareous foothill grasslands, Shield-Smith River valleys, limy foothill grasslands, Pryor-Bighorn foothills, and unglaciated Montana high plains:

(A) total phosphorous concentrations of 0.15 milligrams per liter; and

(B) total nitrogen concentrations of 1.3 milligrams per liter;

(iii) for discharges within the level IV ecoregion as designated by the U.S. environmental protection agency of the Absaroka-Gallatin volcanic mountains:

(A) total phosphorous concentrations of 0.105 milligrams per liter; and

(B) total nitrogen concentrations of 0.80 milligrams per liter;

(iv) for discharges within the level IV ecoregions as designated by the U.S. environmental protection agency excluded from subsection (3)(d)(ii) except for the river breaks for which no nutrient effluent limitations apply:

(A) total phosphorous concentrations of 0.80 milligrams per liter; and

(B) total nitrogen concentrations of 0.80 milligrams per liter;

(e) allows the department to develop reasonable potential guidelines based on concentrations or total phosphorous or total nitrogen greater than those provided in subsections (3)(c) and (3)(d) if:

(i) data demonstrate that existing concentrations of total phosphorous or total nitrogen exceed the concentrations provided in subsection (3)(a) through (3)(d) and that the discharge will not create conditions that are toxic or harmful to human, animal, plant, or aquatic life;

(ii) data demonstrate that existing algae levels exceed a monthly average of 150 milligrams of chlorophyll-a per square meter and that the discharge will not create conditions that are toxic or harmful to human, animal, plant, or aquatic life; or



(iii) data demonstrate that the receiving waterbody can sustain algae levels greater than a monthly average of 150 milligrams of chlorophyll-a per square meter without creating conditions that are toxic or harmful to human, animal, plant, or aquatic life.

**NEW SECTION. Section 2. Transition for nutrient standards -- department.** Subject to board of environmental rulemaking pursuant to [section 1], the department of environmental quality shall implement water quality standards in a manner consistent with [this act] and consistent with [section 1].

**NEW SECTION. Section 3. Board to amend rules.** The board of environmental review shall amend ARM 17.30.201, 17.30.507, 17.30.516, 17.30.602, 17.30.619, 17.30.622, 17.30.623, 17.30.624, 17.30.625, 17.30.626, 17.30.627, 17.30.628, 17.30.629, 17.30.635, 17.30.702, and 17.30.715 to delete all references to department circular DEQ-12A, department circular DEQ-12B, base numeric nutrient standards, and nutrient standards variances.

**NEW SECTION. Section 4. Department to amend rules.** The department of environmental quality shall amend ARM 17.30.602 and 17.30.660 to delete all references to department circular DEQ-12A, department circular DEQ-12B, base numeric nutrient standards, and nutrient standards variances.

**Section 5.** Section 75-5-103, MCA, is amended to read:

**"75-5-103. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an

1 energy development project; or

2 (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy  
3 development project.

4 ~~(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface~~  
5 ~~water that are adopted to protect the designated uses of a surface water body.~~

6 ~~(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite~~  
7 ~~that are adopted to protect human health.~~

8 ~~(3) (2)~~ "Board" means the board of environmental review provided for in 2-15-3502.

9 ~~(4) (3)~~ "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,  
10 or other wastes, creating a hazard to human health.

11 ~~(5) (4)~~ "Council" means the water pollution control advisory council provided for in 2-15-2107.

12 ~~(6) (5)~~ (a) "Currently available data" means data that is readily available to the department at the time  
13 a decision is made, including information supporting its previous lists of water bodies that are threatened or  
14 impaired.

15 (b) The term does not mean new data to be obtained as a result of department efforts.

16 ~~(7) (6)~~ "Degradation" means a change in water quality that lowers the quality of high-quality waters for  
17 a parameter. The term does not include those changes in water quality determined to be nonsignificant  
18 pursuant to 75-5-301(5)(c).

19 ~~(8) (7)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

20 ~~(9) (8)~~ "Disposal system" means a system for disposing of sewage, industrial, or other wastes and  
21 includes sewage systems and treatment works.

22 ~~(10) (9)~~ "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of  
23 chemical, physical, biological, and other constituents that are discharged into state waters.

24 ~~(11) (10)~~ (a) "Energy development project" means each plant, unit, or other development and  
25 associated developments, including any associated supporting infrastructure, designed for or capable of:

26 (i) generating electricity;

27 (ii) producing gas derived from coal;

28 (iii) producing liquid hydrocarbon products;

- 1 (iv) refining crude oil or natural gas;
- 2 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax
- 3 incentive pursuant to Title 15, chapter 70, part 5;
- 4 (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant
- 5 to 15-32-701; or
- 6 (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or
- 7 greater than 50 kilovolts.

8 (b) The term does not include a nuclear facility as defined in 75-20-1202.

9 ~~(12)~~ (11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,

10 whether or not those uses are included in the water quality standards.

11 ~~(13)~~ (12) "High-quality waters" means all state waters, except:

12 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by

13 the board's classification rules; and

14 (b) surface waters that:

15 (i) are not capable of supporting any one of the designated uses for their classification; or

16 (ii) have zero flow or surface expression for more than 270 days during most years.

17 ~~(14)~~ (13) "Impaired water body" means a water body or stream segment for which sufficient credible

18 data shows that the water body or stream segment is failing to achieve compliance with applicable water quality

19 standards.

20 ~~(15)~~ (14) "Industrial waste" means a waste substance from the process of business or industry or from

21 the development of any natural resource, together with any sewage that may be present.

22 ~~(16)~~ (15) "Interested person" means a person who has a real property interest, a water right, or an

23 economic interest that is or may be directly and adversely affected by the department's preliminary decision

24 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested

25 authorization to degrade high-quality waters.

26 ~~(17)~~ (16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to

27 one of its existing or future nonpoint sources or to natural background sources.

28 ~~(18)~~ (17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a

violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

~~(19)~~ (18) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(20)~~ (19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(21)~~ (20) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

~~(22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.~~

~~(23)~~ (21) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of nutrient standards variances, and the implementation of those standards, and variances together with associated economic impacts.

~~(24)~~ (22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(25)~~ (23) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

(26) (24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

(27) (25) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

(28) (26) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

(29) (27) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

(30) (28) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the board under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221.

(c) Contamination referred to in subsection ~~(30)(b)(iii)~~ (28)(b)(iii) does not require a mixing zone.

~~(31)~~ (29) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

1           ~~(32)~~ (30) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or  
2 other wastes to an ultimate disposal point.

3           ~~(33)~~ (31) "Standard of performance" means a standard adopted by the board for the control of the  
4 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of  
5 the best available demonstrated control technology, processes, operating methods, or other alternatives,  
6 including, when practicable, a standard permitting no discharge of pollutants.

7           ~~(34)~~ (32) (a) "State waters" means a body of water, irrigation system, or drainage system, either  
8 surface or underground.

9           (b) The term does not apply to:

- 10           (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or  
11           (ii) irrigation waters or land application disposal waters when the waters are used up within the  
12 irrigation or land application disposal system and the waters are not returned to state waters.

13           ~~(35)~~ (33) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in  
14 combination with narrative information, that supports a finding as to whether a water body is achieving  
15 compliance with applicable water quality standards.

16           ~~(36)~~ (34) "Threatened water body" means a water body or stream segment for which sufficient credible  
17 data and calculated increases in loads show that the water body or stream segment is fully supporting its  
18 designated uses but threatened for a particular designated use because of:

19           (a) proposed sources that are not subject to pollution prevention or control actions required by a  
20 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

21           (b) documented adverse pollution trends.

22           ~~(37)~~ (35) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations  
23 for point sources and load allocations for both nonpoint sources and natural background sources established at  
24 a level necessary to achieve compliance with applicable surface water quality standards.

25           ~~(38)~~ (36) "Treatment works" means works, including sewage lagoons, installed for treating or holding  
26 sewage, industrial wastes, or other wastes.

27           ~~(39)~~ (37) "Waste load allocation" means the portion of a receiving water's loading capacity that is  
28 allocated to one of its existing or future point sources.

~~(40)~~ (38) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(41)~~ (39) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

~~(42)~~ (40) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704.

**75-5-103. (Effective on occurrence of contingency) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

~~(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface water that are adopted to protect the designated uses of a surface water body.~~

~~(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.~~

~~(3)~~ (2) "Board" means the board of environmental review provided for in 2-15-3502.

~~(4)~~ (3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(5)~~ (4) "Council" means the water pollution control advisory council provided for in 2-15-2107.

~~(6)~~ (5) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(7)~~ (6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(8)~~ (7) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(9)~~ (8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(10)~~ (9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

~~(11)~~ (10) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;

(iii) producing liquid hydrocarbon products;

(iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.



~~(12)~~ (11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(13)~~ (12) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

~~(14)~~ (13) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

~~(15)~~ (14) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(16)~~ (15) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

~~(17)~~ (16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

~~(18)~~ (17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

~~(19)~~ (18) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(20)~~ (19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(21)~~ (20) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

~~(22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.~~

~~(23)~~ (21) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of nutrient standards variances, and the implementation of those standards, and variances together with associated economic impacts.

~~(24)~~ (22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(25)~~ (23) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

~~(26)~~ (24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(27)~~ (25) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(28)~~ (26) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(29)~~ (27) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or

1 other floating craft, from which pollutants are or may be discharged.

2 ~~(30)~~ (28) (a) "Pollution" means:

3 (i) contamination or other alteration of the physical, chemical, or biological properties of state waters  
4 that exceeds that permitted by Montana water quality standards, including but not limited to standards relating  
5 to change in temperature, taste, color, turbidity, or odor; or

6 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other  
7 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or  
8 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other  
9 wildlife.

10 (b) The term does not include:

11 (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge  
12 permit rules adopted by the board under this chapter;

13 (ii) activities conducted under this chapter that comply with the conditions imposed by the department  
14 in short-term authorizations pursuant to 75-5-308;

15 (iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in  
16 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter  
17 11, part 1;

18 (iv) contamination of ground water within the boundaries of an underground mine using in situ coal  
19 gasification and operating in accordance with a permit issued under 82-4-221;

20 (c) Contamination referred to in subsections ~~(30)(b)(iii) and (30)(b)(iv)~~ (28)(b)(iii) and (28)(b)(iv) does  
21 not require a mixing zone.

22 ~~(31)~~ (29) "Sewage" means water-carried waste products from residences, public buildings, institutions,  
23 or other buildings, including discharge from human beings or animals, together with ground water infiltration  
24 and surface water present.

25 ~~(32)~~ (30) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or  
26 other wastes to an ultimate disposal point.

27 ~~(33)~~ (31) "Standard of performance" means a standard adopted by the board for the control of the  
28 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of

the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(34)~~ (32) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(35)~~ (33) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(36)~~ (34) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

~~(37)~~ (35) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

~~(38)~~ (36) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(39)~~ (37) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

~~(40)~~ (38) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and

practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(41)~~ (39) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

~~(42)~~ (40) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704."

**Section 6.** Section 75-5-105, MCA, is amended to read:

**"75-5-105. Confidentiality of records.** Except as provided in 80-15-108, any information concerning sources of pollution that is furnished to the board or department or that is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to remain confidential. The department must be served in the action and may intervene as a party. Any information not intended to be public when submitted to the board or department must be submitted in writing and clearly marked as confidential. ~~Except as provided in 75-5-314, the~~ The data describing physical and chemical characteristics of a waste discharged to state waters may not be considered confidential. The board may use any information in compiling or publishing analyses or summaries relating to water pollution if the analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information that is otherwise made confidential by this section."

**Section 7.** Section 75-5-301, MCA, is amended to read:

**"75-5-301. Classification and standards for state waters.** Consistent with the provisions of 80-15-201 and this chapter, the board shall:

(1) establish the classification of all state waters in accordance with their present and future most beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an

1 aquatic ecosystem that includes salmonid or nonsalmonid fish;

2 (2) formulate and adopt standards of water quality, giving consideration to the economics of waste  
3 treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the  
4 requirements of 75-5-312. Standards adopted by the board must meet the following requirements:

5 (a) for carcinogens, the water quality standard for protection of human health must be the value  
6 associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed  $1 \times 10^{-3}$   
7 in the case of arsenic and  $1 \times 10^{-5}$  for other carcinogens. However, if a standard established at a risk level  
8 of  $1 \times 10^{-3}$  for arsenic or  $1 \times 10^{-5}$  for other carcinogens violates the maximum contaminant level obtained from  
9 40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.

10 (b) standards for the protection of aquatic life do not apply to ground water.

11 (c) nutrient water quality standards, whether numeric or narrative, apply only:

12 (i) to streams, except for ephemeral streams, with algae levels greater than a monthly average of 150  
13 milligrams of chlorophyll-a per square meter based on field values, or a calibrated water quality model if field  
14 values are unavailable; and

15 (ii) between July 1 and September 30 of each calendar year.

16 (3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this  
17 chapter, revise established classifications of waters and adopted standards of water quality;

18 (4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the  
19 department be specifically identified and requiring that mixing zones have:

20 (a) the smallest practicable size;

21 (b) a minimum practicable effect on water uses; and

22 (c) definable boundaries;

23 (5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not  
24 limited to rules that:

25 (a) provide a procedure for department review and authorization of degradation;

26 (b) establish criteria for the following:

27 (i) determining important economic or social development; and

28 (ii) weighing the social and economic importance to the public of allowing the proposed project against

1 the cost to society associated with a loss of water quality;

2 (c) establish criteria for determining whether a proposed activity or class of activities, in addition to  
3 those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in  
4 order that those activities are not required to undergo review under 75-5-303(3). These criteria must be  
5 established in a manner that generally:

6 (i) equates significance with the potential for harm to human health, a beneficial use, or the  
7 environment;

8 (ii) considers both the quantity and the strength of the pollutant;

9 (iii) considers the length of time the degradation will occur;

10 (iv) considers the character of the pollutant so that greater significance is associated with carcinogens  
11 and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less  
12 harmful or less persistent.

13 (d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will  
14 not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of  
15 the ground water mixing zone does not exceed:

16 (i) 7.5 milligrams per liter from sources other than sewage;

17 (ii) 5.0 milligrams per liter from sewage discharged from a system that does not use level two  
18 treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less;

19 (iii) 7.5 milligrams per liter from sewage discharged from a system using level two treatment, which  
20 must be defined in the rules; or

21 (iv) 7.5 milligrams per liter from sewage discharged from a system in areas where the ground water  
22 nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.

23 (6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective  
24 and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute  
25 guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy  
26 established in 75-5-303(2) and (3).

27 (7) adopt rules to implement this section."  
28

1           **Section 8.** Section 75-5-317, MCA, is amended to read:

2           **"75-5-317. Nonsignificant activities.** (1) The categories or classes of activities identified in  
3 subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to  
4 human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

5           (2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

6           (a) existing activities that are nonpoint sources of pollution as of April 29, 1993;

7           (b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable  
8 land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully  
9 protected;

10          (c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water  
11 management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental  
12 protection agency-approved label and when existing and anticipated uses will be fully protected;

13          (d) changes in existing water quality resulting from an emergency or remedial activity that is designed  
14 to protect public health or the environment and is approved, authorized, or required by the department;

15          (e) changes in existing ground water quality resulting from treatment of a public water supply system,  
16 as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar  
17 means that is designed to protect the public health or the environment and that is approved, authorized, or  
18 required by the department;

19          (f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well  
20 or monitoring well drilling, development, or abandonment, if used according to department-approved water  
21 quality protection practices and if no discharge to surface water will occur;

22          (g) short-term changes in existing water quality resulting from activities authorized by the department  
23 pursuant to 75-5-308;

24          (h) land application of animal waste, domestic septage, or waste from public sewage treatment  
25 systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates  
26 are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

27          (i) use of gray water, as defined in 75-5-325, from nonpublic gray water reuse systems for irrigation  
28 during the growing season in accordance with gray water reuse rules adopted pursuant to 75-5-305;



(j) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and constructed in accordance with Title 75, chapter 6;

(k) discharges of water to ground water from water well or monitoring well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in accordance with department-approved water quality protection practices;

(l) oil and gas drilling, production, abandonment, plugging, and restoration activities that do not result in discharges to surface water and that are performed in accordance with Title 82, chapter 10, or Title 82, chapter 11;

(m) short-term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to:

(i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;

(ii) fording of streams or other bodies of water by vehicular or other means; and

(iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;

(n) coal and uranium prospecting that does not result in a discharge to surface water, that does not involve a test pit located in surface water or that may affect surface water, and that is performed in accordance with Title 82, chapter 4;

(o) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;

(p) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;

(q) metallic and nonmetallic mineral exploration that does not result in a discharge to surface water and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;

(r) stream-related construction projects or stream enhancement projects that result in temporary changes to water quality but do not result in long-term detrimental effects and that have been authorized pursuant to 75-5-318;

(s) diversions or withdrawals of water established and recognized under Title 85, chapter 2;

(t) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that are related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short term; and

(u) discharges that, after full mixing with the minimum 14-day average streamflow that occurs once every 5 years, result in algae levels less than or equal to a monthly average of 150 milligrams of chlorophyll-a per square meter during the time period from July 1 through September 30; and

~~(u)~~ (v) any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c)."

**Section 9.** Section 75-5-320, MCA, is amended to read:

**"75-5-320. Temporary water quality standards variances.** (1) Except as provided in 75-5-222(2) ~~and 75-5-313~~, the department may adopt rules providing criteria and procedures for the department to issue a temporary variance to water quality standards if:

(a) a variance will not result in a lowering of currently attained, ambient water quality;

(b) the department rules are consistent, as necessary, with federal rules that authorize states to adopt variances from standards, including but not limited to 40 CFR 131.14; and

(c) (i) a permittee cannot reasonably expect to meet a water quality standard during the permit term for which the variance is approved; and

(ii) a permit compliance schedule is not feasible to preclude the need for a variance during the permit term for which the variance is approved.

(2) In order to receive a temporary variance, a permittee shall evaluate facility operations and infrastructure to maximize pollutant reduction through an optimization study. The variance must require the implementation of optimization study actions as terms and conditions of the discharge permit.

(3) The department shall review a temporary variance issued pursuant to this section at least once every 5 years and may continue, modify, or terminate the temporary variance as a result of the review."

1        NEW SECTION. **Section 10. Repealer.** The following sections of the Montana Code Annotated are  
2        repealed:

3 75-5-313. Nutrient standards variances -- individual, general, and alternative.

4 75-5-314. Confidentiality of base numeric standards and nutrient standards variances.

5 75-5-319. Compliance schedule for base numeric nutrient standards.

6

7        NEW SECTION. **Section 11. Codification instruction.** [Sections 1 and 2] are intended to be codified

8 as an integral part of Title 75, chapter 5, and the provisions of Title 75, chapter 5, apply to [sections 1 and 2].

9 - END -

## SENATE BILL NO. 358

INTRODUCED BY J. ESP, M. CUFFE

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING NUTRIENT CRITERIA FROM MONTANA WATER QUALITY STANDARDS; ELIMINATING VARIANCES AND COMPLIANCE SCHEDULES FOR NUTRIENTS; DIRECTING ADOPTION AND AMENDMENT OF ADMINISTRATIVE RULES; PROVIDING FOR A TRANSITION FOR NUTRIENT STANDARDS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-5-103, 75-5-105, ~~75-5-301~~, 75-5-317, AND 75-5-320, MCA; ~~AND REPEALING SECTIONS 75-5-313, 75-5-314, AND 75-5-319, MCA; REPEALING ARM 17.30.660; AND PROVIDING AN IMMEDIATE~~ EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Transition for nutrient standards -- ~~board of environmental review.~~**

The ~~board of environmental rule~~ shall adopt rules related to nutrient standards in consultation with the department of environmental quality and the nutrient work group including:

(1) ~~defining the terms "undesirable aquatic life" and "harmful" in a manner consistent with 75-5-301 ;~~

(2) ~~developing an adaptive management program that provides an incremental approach for restoration and preservation of water quality in streams impaired by nutrients;~~

(3) ~~developing implementation guidance that:~~

(a) ~~applies water quality effluent limitations for nutrients, either nitrogen or phosphorus;~~

(b) ~~considers reasonable potential for total phosphorus and nitrogen after a full mixing of the discharge with the minimum 14-day average streamflow that occurs once every 5 years in the receiving water body;~~

(c) ~~for existing dischargers, considers reasonable potential based on the algae level specified in 75-5-301;~~

(d) ~~for new dischargers, including existing dischargers with an increased source, considers reasonable potential based on the following:~~

~~(i) for discharges within the level III ecoregion as designated by the U.S. environmental protection agency that includes the northern Rocky Mountains, Canadian Rocky Mountains, Idaho batholith, middle Rocky Mountains, except for the level IV ecoregion of the Absaroka-Gallatin volcanic mountains:~~

~~(A) total phosphorus concentrations of 0.03 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 0.8 milligrams per liter;~~

~~(ii) for discharges within the level III ecoregion as designated by the U.S. environmental protection agency that includes the northwestern glaciated plains, northwestern great plains, and Wyoming basin, excluding the level IV ecoregions of the sweetgrass uplands, Milk River pothole uplands, Rocky Mountain front foothill potholes, foothill grasslands, river breaks, non-calcareous foothill grasslands, Shield-Smith River valleys, limy foothill grasslands, Pryor-Bighorn foothills, and unglaciated Montana high plains:~~

~~(A) total phosphorous concentrations of 0.15 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 1.3 milligrams per liter;~~

~~(iii) for discharges within the level IV ecoregion as designated by the U.S. environmental protection agency of the Absaroka-Gallatin volcanic mountains:~~

~~(A) total phosphorous concentrations of 0.105 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 0.80 milligrams per liter;~~

~~(iv) for discharges within the level IV ecoregions as designated by the U.S. environmental protection agency excluded from subsection (3)(d)(ii) except for the river breaks for which no nutrient effluent limitations apply:~~

~~(A) total phosphorous concentrations of 0.80 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 0.80 milligrams per liter;~~

~~(e) allows the department to develop reasonable potential guidelines based on concentrations or total phosphorous or total nitrogen greater than those provided in subsections (3)(c) and (3)(d) if:~~

~~(i) data demonstrate that existing concentrations of total phosphorous or total nitrogen exceed the concentrations provided in subsection (3)(a) through (3)(d) and that the discharge will not create conditions that are toxic or harmful to human, animal, plant, or aquatic life;~~

~~(ii) data demonstrate that existing algae levels exceed a monthly average of 150 milligrams of chlorophyll-a per square meter and that the discharge will not create conditions that are toxic or harmful to~~

1 human, animal, plant, or aquatic life; or

2 (iii) ~~data demonstrate that the receiving waterbody can sustain algae levels greater than a monthly~~  
3 ~~average of 150 milligrams of chlorophyll-a per square meter without creating conditions that are toxic or harmful~~  
4 ~~to human, animal, plant, or aquatic life.~~

5 (1) BY MARCH 1, 2022, THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL ADOPT RULES RELATED TO  
6 NARRATIVE NUTRIENT STANDARDS IN CONSULTATION WITH THE NUTRIENT WORK GROUP.

7 (2) THE RULES SHALL PROVIDE FOR THE DEVELOPMENT OF AN ADAPTIVE MANAGEMENT PROGRAM WHICH  
8 PROVIDES FOR AN INCREMENTAL WATERSHED APPROACH FOR PROTECTING AND MAINTAINING WATER QUALITY, AND  
9 THAT:

10 (A) REASONABLY BALANCES ALL FACTORS IMPACTING A WATER BODY;

11 (B) PRIORITIZES THE MINIMIZATION OF PHOSPHORUS, TAKING INTO ACCOUNT SITE-SPECIFIC CONDITIONS; AND

12 (C) IDENTIFIES THE APPROPRIATE RESPONSE VARIABLES AFFECTED BY NUTRIENTS AND ASSOCIATED IMPACT  
13 THRESHOLDS IN ACCORDANCE WITH THE BENEFICIAL USES OF THE WATERBODY.

14 (3) IN DEVELOPING THE RULES IN SUBSECTION (2), THE DEPARTMENT SHALL CONSIDER OPTIONS PERTAINING  
15 TO WHETHER THE POINT SOURCE IS NEW OR EXISTING AND WHETHER THE RECEIVING WATER BODY IS CONSIDERED  
16 IMPAIRED OR UNIMPAIRED.

17  
18 NEW SECTION. Section 2. Transition for nutrient standards -- department. ~~Subject to board of~~  
19 ~~environmental rulemaking pursuant to [section 1], the department of environmental quality shall implement~~  
20 ~~water quality standards in a manner consistent with [ this act ] and consistent with [section 1].~~ (1) UNTIL FINAL  
21 RULES ARE ADOPTED PURSUANT TO [SECTION 1], THE DEPARTMENT SHALL ADMINISTER THE DISCHARGE PERMITTING  
22 PROGRAM UNDER 75-5-402 IN A MANNER CONSISTENT WITH ARM 17.30.637 AND THE INTENT OF [THIS ACT].

23 (2) ANY NUTRIENT STANDARDS VARIANCES CURRENTLY AUTHORIZED AND EFFECTIVE ARE HEREBY  
24 AUTHORIZED AND EFFECTIVE UNDER 75-5-320 UNTIL OTHERWISE AMENDED OR REPEALED.

25  
26 NEW SECTION. Section 3. Board to amend rules. The board of environmental review shall amend  
27 ARM 17.30.201, 17.30.507, 17.30.516, 17.30.602, 17.30.619, 17.30.622, 17.30.623, 17.30.624, 17.30.625,  
28 17.30.626, 17.30.627, 17.30.628, 17.30.629, 17.30.635, 17.30.702, and 17.30.715 to delete all references to

department circular DEQ-12A, department circular DEQ-12B, base numeric nutrient standards, and nutrient standards variances.

**NEW SECTION. Section 4. Department to amend rules.** The department of environmental quality shall amend ARM 17.30.602 ~~and 17.30.660~~ to delete all references to department circular DEQ-12A, department circular DEQ-12B, base numeric nutrient standards, and nutrient standards variances.

**Section 5.** Section 75-5-103, MCA, is amended to read:

**"75-5-103. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

~~(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface water that are adopted to protect the designated uses of a surface water body.~~

~~(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.~~

~~(3)~~ (2) "Board" means the board of environmental review provided for in 2-15-3502.

~~(4)~~ (3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(5)~~ (4) "Council" means the water pollution control advisory council provided for in 2-15-2107.

~~(6)~~ (5) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(7)~~ (6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(8)~~ (7) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(9)~~ (8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(10)~~ (9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

~~(11)~~ (10) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;

(iii) producing liquid hydrocarbon products;

(iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(12)~~ (11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(13)~~ (12) "High-quality waters" means all state waters, except:



(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

~~(14)~~ (13) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

~~(15)~~ (14) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(16)~~ (15) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

~~(17)~~ (16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

~~(18)~~ (17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

~~(19)~~ (18) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(20)~~ (19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(21)~~ (20) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

~~(22)~~ "Nutrient standards variance" means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.

~~(23)~~ (21) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of nutrient standards variances, and the implementation of those standards, and variances together with associated economic impacts.

~~(24)~~ (22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(25)~~ (23) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

~~(26)~~ (24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(27)~~ (25) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(28)~~ (26) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(29)~~ (27) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(30)~~ (28) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters

1 that exceeds that permitted by Montana water quality standards, including but not limited to standards relating  
2 to change in temperature, taste, color, turbidity, or odor; or

3 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other  
4 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or  
5 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other  
6 wildlife.

7 (b) The term does not include:

8 (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge  
9 permit rules adopted by the board under this chapter;

10 (ii) activities conducted under this chapter that comply with the conditions imposed by the department  
11 in short-term authorizations pursuant to 75-5-308;

12 (iii) contamination of ground water within the boundaries of an underground mine using in situ coal  
13 gasification and operating in accordance with a permit issued under 82-4-221.

14 (c) Contamination referred to in subsection ~~(30)(b)(iii)~~ (28)(b)(iii) does not require a mixing zone.

15 ~~(31)~~ (29) "Sewage" means water-carried waste products from residences, public buildings, institutions,  
16 or other buildings, including discharge from human beings or animals, together with ground water infiltration  
17 and surface water present.

18 ~~(32)~~ (30) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or  
19 other wastes to an ultimate disposal point.

20 ~~(33)~~ (31) "Standard of performance" means a standard adopted by the board for the control of the  
21 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of  
22 the best available demonstrated control technology, processes, operating methods, or other alternatives,  
23 including, when practicable, a standard permitting no discharge of pollutants.

24 ~~(34)~~ (32) (a) "State waters" means a body of water, irrigation system, or drainage system, either  
25 surface or underground.

26 (b) The term does not apply to:

27 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

28 (ii) irrigation waters or land application disposal waters when the waters are used up within the

1 irrigation or land application disposal system and the waters are not returned to state waters.

2 ~~(35)~~ (33) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in  
3 combination with narrative information, that supports a finding as to whether a water body is achieving  
4 compliance with applicable water quality standards.

5 ~~(36)~~ (34) "Threatened water body" means a water body or stream segment for which sufficient credible  
6 data and calculated increases in loads show that the water body or stream segment is fully supporting its  
7 designated uses but threatened for a particular designated use because of:

8 (a) proposed sources that are not subject to pollution prevention or control actions required by a  
9 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

10 (b) documented adverse pollution trends.

11 ~~(37)~~ (35) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations  
12 for point sources and load allocations for both nonpoint sources and natural background sources established at  
13 a level necessary to achieve compliance with applicable surface water quality standards.

14 ~~(38)~~ (36) "Treatment works" means works, including sewage lagoons, installed for treating or holding  
15 sewage, industrial wastes, or other wastes.

16 ~~(39)~~ (37) "Waste load allocation" means the portion of a receiving water's loading capacity that is  
17 allocated to one of its existing or future point sources.

18 ~~(40)~~ (38) "Water quality protection practices" means those activities, prohibitions, maintenance  
19 procedures, or other management practices applied to point and nonpoint sources designed to protect,  
20 maintain, and improve the quality of state waters. Water quality protection practices include but are not limited  
21 to treatment requirements, standards of performance, effluent standards, and operating procedures and  
22 practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

23 ~~(41)~~ (39) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or  
24 otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

25 ~~(42)~~ (40) "Watershed advisory group" means a group of individuals who wish to participate in an  
26 advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the  
27 development of TMDLs under 75-5-703, including those groups or individuals requested by the department to  
28 participate in an advisory capacity as provided in 75-5-704.

**75-5-103. (Effective on occurrence of contingency) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

~~(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface water that are adopted to protect the designated uses of a surface water body.~~

~~(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.~~

~~(3) (2)~~ (2) "Board" means the board of environmental review provided for in 2-15-3502.

~~(4) (3)~~ (3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(5) (4)~~ (4) "Council" means the water pollution control advisory council provided for in 2-15-2107.

~~(6) (5)~~ (5) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(7) (6)~~ (6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(8) (7)~~ (7) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(9)~~ (8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(10)~~ (9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

~~(11)~~ (10) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;

(iii) producing liquid hydrocarbon products;

(iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(12)~~ (11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(13)~~ (12) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

~~(14)~~ (13) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

(15) (14) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(16) (15) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(17) (16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

(18) (17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

(19) (18) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(20) (19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

(21) (20) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

~~(22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.~~

~~(23) (21) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of nutrient standards variances, and the implementation of those standards, and variances~~

1 ~~together with~~ associated economic impacts.

2 ~~(24)~~ (22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,  
3 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or  
4 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

5 ~~(25)~~ (23) "Outstanding resource waters" means:

6 (a) state surface waters located wholly within the boundaries of areas designated as national parks or  
7 national wilderness areas as of October 1, 1995; or

8 (b) other surface waters or ground waters classified by the board under the provisions of 75-5-316  
9 and approved by the legislature.

10 ~~(26)~~ (24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a  
11 point source.

12 ~~(27)~~ (25) "Parameter" means a physical, biological, or chemical property of state water when a value of  
13 that property affects the quality of the state water.

14 ~~(28)~~ (26) "Person" means the state, a political subdivision of the state, institution, firm, corporation,  
15 partnership, individual, or other entity and includes persons resident in Canada.

16 ~~(29)~~ (27) "Point source" means a discernible, confined, and discrete conveyance, including but not  
17 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or  
18 other floating craft, from which pollutants are or may be discharged.

19 ~~(30)~~ (28) (a) "Pollution" means:

20 (i) contamination or other alteration of the physical, chemical, or biological properties of state waters  
21 that exceeds that permitted by Montana water quality standards, including but not limited to standards relating  
22 to change in temperature, taste, color, turbidity, or odor; or

23 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other  
24 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or  
25 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other  
26 wildlife.

27 (b) The term does not include:

28 (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge



1 permit rules adopted by the board under this chapter;

2 (ii) activities conducted under this chapter that comply with the conditions imposed by the department  
3 in short-term authorizations pursuant to 75-5-308;

4 (iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in  
5 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter  
6 11, part 1;

7 (iv) contamination of ground water within the boundaries of an underground mine using in situ coal  
8 gasification and operating in accordance with a permit issued under 82-4-221;

9 (c) Contamination referred to in subsections ~~(30)(b)(iii) and (30)(b)(iv)~~ (28)(b)(iii) and (28)(b)(iv) does  
10 not require a mixing zone.

11 ~~(31)~~ (29) "Sewage" means water-carried waste products from residences, public buildings, institutions,  
12 or other buildings, including discharge from human beings or animals, together with ground water infiltration  
13 and surface water present.

14 ~~(32)~~ (30) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or  
15 other wastes to an ultimate disposal point.

16 ~~(33)~~ (31) "Standard of performance" means a standard adopted by the board for the control of the  
17 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of  
18 the best available demonstrated control technology, processes, operating methods, or other alternatives,  
19 including, when practicable, a standard permitting no discharge of pollutants.

20 ~~(34)~~ (32) (a) "State waters" means a body of water, irrigation system, or drainage system, either  
21 surface or underground.

22 (b) The term does not apply to:

23 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

24 (ii) irrigation waters or land application disposal waters when the waters are used up within the  
25 irrigation or land application disposal system and the waters are not returned to state waters.

26 ~~(35)~~ (33) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in  
27 combination with narrative information, that supports a finding as to whether a water body is achieving  
28 compliance with applicable water quality standards.

~~(36)~~ (34) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

- (a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or
- (b) documented adverse pollution trends.

~~(37)~~ (35) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

~~(38)~~ (36) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(39)~~ (37) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

~~(40)~~ (38) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(41)~~ (39) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

~~(42)~~ (40) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704."

**Section 6.** Section 75-5-105, MCA, is amended to read:

**"75-5-105. Confidentiality of records.** Except as provided in 80-15-108, any information concerning sources of pollution that is furnished to the board or department or that is obtained by either of them is a matter

1 of public record and open to public use. However, any information unique to the owner or operator of a source  
2 of pollution that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be  
3 maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file  
4 a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the  
5 information to remain confidential. The department must be served in the action and may intervene as a party.  
6 Any information not intended to be public when submitted to the board or department must be submitted in  
7 writing and clearly marked as confidential. ~~Except as provided in 75-5-314, the~~ The data describing physical  
8 and chemical characteristics of a waste discharged to state waters may not be considered confidential. The  
9 board may use any information in compiling or publishing analyses or summaries relating to water pollution if  
10 the analyses or summaries do not identify any owner or operator of a source of pollution or reveal any  
11 information that is otherwise made confidential by this section."

12  
13 **Section 7.** Section 75-5-301, MCA, is amended to read:

14 ~~"75-5-301. Classification and standards for state waters.~~ Consistent with the provisions of 80-15-  
15 201 and this chapter, the board shall:

16 (1) ~~establish the classification of all state waters in accordance with their present and future most~~  
17 ~~beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an~~  
18 ~~aquatic ecosystem that includes salmonid or nonsalmonid fish;~~

19 (2) ~~formulate and adopt standards of water quality, giving consideration to the economics of waste~~  
20 ~~treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the~~  
21 ~~requirements of 75-5-312. Standards adopted by the board must meet the following requirements:~~

22 (a) ~~for carcinogens, the water quality standard for protection of human health must be the value~~  
23 ~~associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed 1 x~~  
24 ~~10<sup>-3</sup> in the case of arsenic and 1 x 10<sup>-5</sup> for other carcinogens. However, if a standard established at a risk level~~  
25 ~~of 1 x 10<sup>-3</sup> for arsenic or 1 x 10<sup>-5</sup> for other carcinogens violates the maximum contaminant level obtained from~~  
26 ~~40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.~~

27 (b) ~~standards for the protection of aquatic life do not apply to ground water.~~

28 (c) ~~nutrient water quality standards, whether numeric or narrative, apply only;~~

~~(i) to streams, except for ephemeral streams, with algae levels greater than a monthly average of 150 milligrams of chlorophyll-a per square meter based on field values, or a calibrated water quality model if field values are unavailable; and~~

~~(ii) between July 1 and September 30 of each calendar year.~~

~~(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;~~

~~(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified and requiring that mixing zones have:~~

~~(a) the smallest practicable size;~~

~~(b) a minimum practicable effect on water uses; and~~

~~(c) definable boundaries;~~

~~(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:~~

~~(a) provide a procedure for department review and authorization of degradation;~~

~~(b) establish criteria for the following:~~

~~(i) determining important economic or social development; and~~

~~(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;~~

~~(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303 (3). These criteria must be established in a manner that generally:~~

~~(i) equates significance with the potential for harm to human health, a beneficial use, or the environment;~~

~~(ii) considers both the quantity and the strength of the pollutant;~~

~~(iii) considers the length of time the degradation will occur;~~

~~(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less~~

1    ~~harmful or less persistent.~~

2            ~~(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will~~  
3    ~~not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of~~  
4    ~~the ground water mixing zone does not exceed:~~

5            ~~(i) 7.5 milligrams per liter from sources other than sewage;~~

6            ~~(ii) 5.0 milligrams per liter from sewage discharged from a system that does not use level two~~  
7    ~~treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less;~~

8            ~~(iii) 7.5 milligrams per liter from sewage discharged from a system using level two treatment, which~~  
9    ~~must be defined in the rules; or~~

10           ~~(iv) 7.5 milligrams per liter from sewage discharged from a system in areas where the ground water~~  
11    ~~nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.~~

12           ~~(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective~~  
13    ~~and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute~~  
14    ~~guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy~~  
15    ~~established in 75-5-303 (2) and (3).~~

16           ~~(7) adopt rules to implement this section."~~

17  
18           **Section 7.** Section 75-5-317, MCA, is amended to read:

19           **"75-5-317. Nonsignificant activities.** (1) The categories or classes of activities identified in  
20    subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to  
21    human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

22           (2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

23           (a) existing activities that are nonpoint sources of pollution as of April 29, 1993;

24           (b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable  
25    land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully  
26    protected;

27           (c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water  
28    management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental

1 protection agency-approved label and when existing and anticipated uses will be fully protected;

2 (d) changes in existing water quality resulting from an emergency or remedial activity that is designed  
3 to protect public health or the environment and is approved, authorized, or required by the department;

4 (e) changes in existing ground water quality resulting from treatment of a public water supply system,  
5 as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar  
6 means that is designed to protect the public health or the environment and that is approved, authorized, or  
7 required by the department;

8 (f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well  
9 or monitoring well drilling, development, or abandonment, if used according to department-approved water  
10 quality protection practices and if no discharge to surface water will occur;

11 (g) short-term changes in existing water quality resulting from activities authorized by the department  
12 pursuant to 75-5-308;

13 (h) land application of animal waste, domestic septage, or waste from public sewage treatment  
14 systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates  
15 are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

16 (i) use of gray water, as defined in 75-5-325, from nonpublic gray water reuse systems for irrigation  
17 during the growing season in accordance with gray water reuse rules adopted pursuant to 75-5-305;

18 (j) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a  
19 public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and  
20 constructed in accordance with Title 75, chapter 6;

21 (k) discharges of water to ground water from water well or monitoring well tests, hydrostatic pressure  
22 and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs,  
23 conducted in accordance with department-approved water quality protection practices;

24 (l) oil and gas drilling, production, abandonment, plugging, and restoration activities that do not result  
25 in discharges to surface water and that are performed in accordance with Title 82, chapter 10, or Title 82,  
26 chapter 11;

27 (m) short-term changes in existing water quality resulting from ordinary and everyday activities of  
28 humans or domesticated animals, including but not limited to:

- (i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;
- (ii) fording of streams or other bodies of water by vehicular or other means; and
- (iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;
- (n) coal and uranium prospecting that does not result in a discharge to surface water, that does not involve a test pit located in surface water or that may affect surface water, and that is performed in accordance with Title 82, chapter 4;
- (o) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;
- (p) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;
- (q) metallic and nonmetallic mineral exploration that does not result in a discharge to surface water and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;
- (r) stream-related construction projects or stream enhancement projects that result in temporary changes to water quality but do not result in long-term detrimental effects and that have been authorized pursuant to 75-5-318;
- (s) diversions or withdrawals of water established and recognized under Title 85, chapter 2;
- (t) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that are related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short term; ~~and~~
- (U) DISCHARGES OF TOTAL PHOSPHORUS OR TOTAL NITROGEN THAT DO NOT:
- (I) CREATE CONDITIONS THAT ARE TOXIC OR HARMFUL TO HUMAN, ANIMAL, PLANT, AND AQUATIC LIFE;
- (II) CREATE CONDITIONS THAT PRODUCE UNDESIRABLE AQUATIC LIFE; OR
- (III) CAUSE MEASURABLE CHANGES IN AQUATIC LIFE; AND
- ~~(u)(v)~~ discharges that, after full mixing with the minimum 14-day average streamflow that occurs once every 5 years, result in algae levels less than or equal to a monthly average of 150 milligrams of chlorophyll-a

1 per square meter during the time period from July 1 through September 30; and  
2 ~~(u) (v) — any other activity that is nonsignificant because of its low potential for harm to human health or~~  
3 ~~to the environment and its conformance with the guidance found in 75-5-301 (5)(c)."~~  
4

5 **Section 8.** Section 75-5-320, MCA, is amended to read:

6 **"75-5-320. Temporary water quality standards variances.** (1) Except as provided in 75-5-222(2)  
7 ~~and 75-5-313~~, the department may adopt rules providing criteria and procedures for the department to issue a  
8 temporary variance to water quality standards if:

9 (a) a variance will not result in a lowering of currently attained, ambient water quality;

10 (b) the department rules are consistent, as necessary, with federal rules that authorize states to adopt  
11 variances from standards, including but not limited to 40 CFR 131.14; and

12 (c) (i) a permittee cannot reasonably expect to meet a water quality standard during the permit term  
13 for which the variance is approved; and

14 (ii) a permit compliance schedule is not feasible to preclude the need for a variance during the permit  
15 term for which the variance is approved.

16 (2) In order to receive a temporary variance, a permittee shall evaluate facility operations and  
17 infrastructure to maximize pollutant reduction through an optimization study. The variance must require the  
18 implementation of optimization study actions as terms and conditions of the discharge permit.

19 (3) The department shall review a temporary variance issued pursuant to this section at least once  
20 every 5 years and may continue, modify, or terminate the temporary variance as a result of the review."  
21

22 **NEW SECTION. Section 9. Repealer.** The following sections of the Montana Code Annotated are  
23 repealed:

24 75-5-313. Nutrient standards variances -- individual, general, and alternative.

25 75-5-314. Confidentiality of base numeric standards and nutrient standards variances.

26 75-5-319. Compliance schedule for base numeric nutrient standards.  
27

28 **NEW SECTION. SECTION 10. REPEALER. ARM 17.30.660 IS REPEALED.**



1  
2        NEW SECTION. Section 11. Codification instruction. [Sections 1 and 2] are intended to be codified  
3 as an integral part of Title 75, chapter 5, and the provisions of Title 75, chapter 5, apply to [sections 1 and 2].  
4

5        NEW SECTION. SECTION 12. SAVING CLAUSE. [THIS ACT] DOES NOT AFFECT NUTRIENT STANDARDS  
6 VARIANCES GRANTED BEFORE [THE EFFECTIVE DATE OF THIS ACT], OR RIGHTS AND DUTIES THAT MATURED, PENALTIES  
7 THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS ACT].  
8

9        NEW SECTION. SECTION 13. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.  
10

- END -

## SENATE BILL NO. 358

INTRODUCED BY J. ESP, M. CUFFE

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING NUTRIENT CRITERIA FROM MONTANA WATER QUALITY STANDARDS; ELIMINATING VARIANCES AND COMPLIANCE SCHEDULES FOR NUTRIENTS; DIRECTING ADOPTION AND AMENDMENT OF ADMINISTRATIVE RULES; PROVIDING FOR A TRANSITION FOR NUTRIENT STANDARDS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-5-103, 75-5-105, ~~75-5-301~~, 75-5-317, AND 75-5-320, MCA; ~~AND REPEALING SECTIONS 75-5-313, 75-5-314, AND 75-5-319, MCA; REPEALING ARM 17.30.660; AND PROVIDING AN IMMEDIATE~~ EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Transition for nutrient standards -- ~~board of environmental review.~~**

The ~~board of environmental rule~~ shall adopt rules related to nutrient standards in consultation with the department of environmental quality and the nutrient work group including:

(1) ~~defining the terms "undesirable aquatic life" and "harmful" in a manner consistent with 75-5-301 ;~~

(2) ~~developing an adaptive management program that provides an incremental approach for restoration and preservation of water quality in streams impaired by nutrients;~~

(3) ~~developing implementation guidance that:~~

(a) ~~applies water quality effluent limitations for nutrients, either nitrogen or phosphorus;~~

(b) ~~considers reasonable potential for total phosphorus and nitrogen after a full mixing of the discharge with the minimum 14-day average streamflow that occurs once every 5 years in the receiving water body;~~

(c) ~~for existing dischargers, considers reasonable potential based on the algae level specified in 75-5-301;~~

(d) ~~for new dischargers, including existing dischargers with an increased source, considers reasonable potential based on the following:~~

~~(i) for discharges within the level III ecoregion as designated by the U.S. environmental protection agency that includes the northern Rocky Mountains, Canadian Rocky Mountains, Idaho batholith, middle Rocky Mountains, except for the level IV ecoregion of the Absaroka-Gallatin volcanic mountains:~~

~~(A) total phosphorus concentrations of 0.03 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 0.8 milligrams per liter;~~

~~(ii) for discharges within the level III ecoregion as designated by the U.S. environmental protection agency that includes the northwestern glaciated plains, northwestern great plains, and Wyoming basin, excluding the level IV ecoregions of the sweetgrass uplands, Milk River pothole uplands, Rocky Mountain front foothill potholes, foothill grasslands, river breaks, non-calcareous foothill grasslands, Shield-Smith River valleys, limy foothill grasslands, Pryor-Bighorn foothills, and unglaciated Montana high plains:~~

~~(A) total phosphorous concentrations of 0.15 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 1.3 milligrams per liter;~~

~~(iii) for discharges within the level IV ecoregion as designated by the U.S. environmental protection agency of the Absaroka-Gallatin volcanic mountains:~~

~~(A) total phosphorous concentrations of 0.105 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 0.80 milligrams per liter;~~

~~(iv) for discharges within the level IV ecoregions as designated by the U.S. environmental protection agency excluded from subsection (3)(d)(ii) except for the river breaks for which no nutrient effluent limitations apply:~~

~~(A) total phosphorous concentrations of 0.80 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 0.80 milligrams per liter;~~

~~(e) allows the department to develop reasonable potential guidelines based on concentrations or total phosphorous or total nitrogen greater than those provided in subsections (3)(c) and (3)(d) if:~~

~~(i) data demonstrate that existing concentrations of total phosphorous or total nitrogen exceed the concentrations provided in subsection (3)(a) through (3)(d) and that the discharge will not create conditions that are toxic or harmful to human, animal, plant, or aquatic life;~~

~~(ii) data demonstrate that existing algae levels exceed a monthly average of 150 milligrams of chlorophyll-a per square meter and that the discharge will not create conditions that are toxic or harmful to~~

1 human, animal, plant, or aquatic life; or

2 ~~(iii) data demonstrate that the receiving waterbody can sustain algae levels greater than a monthly~~  
3 ~~average of 150 milligrams of chlorophyll-a per square meter without creating conditions that are toxic or harmful~~  
4 ~~to human, animal, plant, or aquatic life.~~

5 (1) BY MARCH 1, 2022, THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL ADOPT RULES RELATED TO  
6 NARRATIVE NUTRIENT STANDARDS IN CONSULTATION WITH THE NUTRIENT WORK GROUP.

7 (2) THE RULES SHALL PROVIDE FOR THE DEVELOPMENT OF AN ADAPTIVE MANAGEMENT PROGRAM WHICH  
8 PROVIDES FOR AN INCREMENTAL WATERSHED APPROACH FOR PROTECTING AND MAINTAINING WATER QUALITY, AND  
9 THAT:

10 (A) REASONABLY BALANCES ALL FACTORS IMPACTING A WATER BODY;

11 (B) PRIORITIZES THE MINIMIZATION OF PHOSPHORUS, TAKING INTO ACCOUNT SITE-SPECIFIC CONDITIONS; AND

12 (C) IDENTIFIES THE APPROPRIATE RESPONSE VARIABLES AFFECTED BY NUTRIENTS AND ASSOCIATED IMPACT  
13 THRESHOLDS IN ACCORDANCE WITH THE BENEFICIAL USES OF THE WATERBODY.

14 (3) IN DEVELOPING THE RULES IN SUBSECTION (2), THE DEPARTMENT SHALL CONSIDER OPTIONS PERTAINING  
15 TO WHETHER THE POINT SOURCE IS NEW OR EXISTING AND WHETHER THE RECEIVING WATER BODY IS CONSIDERED  
16 IMPAIRED OR UNIMPAIRED.

17  
18 NEW SECTION. Section 2. Transition for nutrient standards -- department. ~~Subject to board of~~  
19 ~~environmental rulemaking pursuant to [section 1], the department of environmental quality shall implement~~  
20 ~~water quality standards in a manner consistent with [ this act ] and consistent with [section 1].~~ (1) UNTIL FINAL  
21 RULES ARE ADOPTED PURSUANT TO [SECTION 1], THE DEPARTMENT SHALL ADMINISTER THE DISCHARGE PERMITTING  
22 PROGRAM UNDER 75-5-402 IN A MANNER CONSISTENT WITH ARM 17.30.637 AND THE INTENT OF [THIS ACT].

23 (2) ANY NUTRIENT STANDARDS VARIANCES CURRENTLY AUTHORIZED AND EFFECTIVE ARE HEREBY  
24 AUTHORIZED AND EFFECTIVE UNDER 75-5-320 UNTIL OTHERWISE AMENDED OR REPEALED.

25  
26 NEW SECTION. Section 3. Board to amend rules. The board of environmental review shall amend  
27 ARM 17.30.201, 17.30.507, 17.30.516, 17.30.602, 17.30.619, 17.30.622, 17.30.623, 17.30.624, 17.30.625,  
28 17.30.626, 17.30.627, 17.30.628, 17.30.629, 17.30.635, 17.30.702, and 17.30.715 to delete all references to

department circular DEQ-12A, department circular DEQ-12B, base numeric nutrient standards, and nutrient standards variances.

**NEW SECTION. Section 4. Department to amend rules.** The department of environmental quality shall amend ARM 17.30.602 ~~and 17.30.660~~ to delete all references to department circular DEQ-12A, department circular DEQ-12B, base numeric nutrient standards, and nutrient standards variances.

**Section 5.** Section 75-5-103, MCA, is amended to read:

**"75-5-103. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

~~(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface water that are adopted to protect the designated uses of a surface water body.~~

~~(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.~~

~~(3)~~ (2) "Board" means the board of environmental review provided for in 2-15-3502.

~~(4)~~ (3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(5)~~ (4) "Council" means the water pollution control advisory council provided for in 2-15-2107.

~~(6)~~ (5) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(7)~~ (6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(8)~~ (7) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(9)~~ (8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(10)~~ (9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

~~(11)~~ (10) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;

(iii) producing liquid hydrocarbon products;

(iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(12)~~ (11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(13)~~ (12) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

~~(14)~~ (13) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

~~(15)~~ (14) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(16)~~ (15) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

~~(17)~~ (16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

~~(18)~~ (17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

~~(19)~~ (18) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(20)~~ (19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(21)~~ (20) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

~~(22)~~ "Nutrient standards variance" means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.

~~(23)~~ (21) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of nutrient standards variances, and the implementation of those standards, and variances together with associated economic impacts.

~~(24)~~ (22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(25)~~ (23) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

~~(26)~~ (24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(27)~~ (25) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(28)~~ (26) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(29)~~ (27) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(30)~~ (28) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters



1 that exceeds that permitted by Montana water quality standards, including but not limited to standards relating  
2 to change in temperature, taste, color, turbidity, or odor; or

3 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other  
4 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or  
5 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other  
6 wildlife.

7 (b) The term does not include:

8 (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge  
9 permit rules adopted by the board under this chapter;

10 (ii) activities conducted under this chapter that comply with the conditions imposed by the department  
11 in short-term authorizations pursuant to 75-5-308;

12 (iii) contamination of ground water within the boundaries of an underground mine using in situ coal  
13 gasification and operating in accordance with a permit issued under 82-4-221.

14 (c) Contamination referred to in subsection ~~(30)(b)(iii)~~ (28)(b)(iii) does not require a mixing zone.

15 ~~(31)~~ (29) "Sewage" means water-carried waste products from residences, public buildings, institutions,  
16 or other buildings, including discharge from human beings or animals, together with ground water infiltration  
17 and surface water present.

18 ~~(32)~~ (30) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or  
19 other wastes to an ultimate disposal point.

20 ~~(33)~~ (31) "Standard of performance" means a standard adopted by the board for the control of the  
21 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of  
22 the best available demonstrated control technology, processes, operating methods, or other alternatives,  
23 including, when practicable, a standard permitting no discharge of pollutants.

24 ~~(34)~~ (32) (a) "State waters" means a body of water, irrigation system, or drainage system, either  
25 surface or underground.

26 (b) The term does not apply to:

27 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

28 (ii) irrigation waters or land application disposal waters when the waters are used up within the

1 irrigation or land application disposal system and the waters are not returned to state waters.

2 ~~(35)~~ (33) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in  
3 combination with narrative information, that supports a finding as to whether a water body is achieving  
4 compliance with applicable water quality standards.

5 ~~(36)~~ (34) "Threatened water body" means a water body or stream segment for which sufficient credible  
6 data and calculated increases in loads show that the water body or stream segment is fully supporting its  
7 designated uses but threatened for a particular designated use because of:

8 (a) proposed sources that are not subject to pollution prevention or control actions required by a  
9 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

10 (b) documented adverse pollution trends.

11 ~~(37)~~ (35) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations  
12 for point sources and load allocations for both nonpoint sources and natural background sources established at  
13 a level necessary to achieve compliance with applicable surface water quality standards.

14 ~~(38)~~ (36) "Treatment works" means works, including sewage lagoons, installed for treating or holding  
15 sewage, industrial wastes, or other wastes.

16 ~~(39)~~ (37) "Waste load allocation" means the portion of a receiving water's loading capacity that is  
17 allocated to one of its existing or future point sources.

18 ~~(40)~~ (38) "Water quality protection practices" means those activities, prohibitions, maintenance  
19 procedures, or other management practices applied to point and nonpoint sources designed to protect,  
20 maintain, and improve the quality of state waters. Water quality protection practices include but are not limited  
21 to treatment requirements, standards of performance, effluent standards, and operating procedures and  
22 practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

23 ~~(41)~~ (39) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or  
24 otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

25 ~~(42)~~ (40) "Watershed advisory group" means a group of individuals who wish to participate in an  
26 advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the  
27 development of TMDLs under 75-5-703, including those groups or individuals requested by the department to  
28 participate in an advisory capacity as provided in 75-5-704.

**75-5-103. (Effective on occurrence of contingency) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

~~(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface water that are adopted to protect the designated uses of a surface water body.~~

~~(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.~~

~~(3) (2)~~ (2) "Board" means the board of environmental review provided for in 2-15-3502.

~~(4) (3)~~ (3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(5) (4)~~ (4) "Council" means the water pollution control advisory council provided for in 2-15-2107.

~~(6) (5)~~ (5) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(7) (6)~~ (6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(8) (7)~~ (7) "Department" means the department of environmental quality provided for in 2-15-3501.

1           ~~(9)~~ (8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and  
2 includes sewage systems and treatment works.

3           ~~(10)~~ (9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of  
4 chemical, physical, biological, and other constituents that are discharged into state waters.

5           ~~(11)~~ (10) (a) "Energy development project" means each plant, unit, or other development and  
6 associated developments, including any associated supporting infrastructure, designed for or capable of:

7           (i) generating electricity;

8           (ii) producing gas derived from coal;

9           (iii) producing liquid hydrocarbon products;

10          (iv) refining crude oil or natural gas;

11          (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax  
12 incentive pursuant to Title 15, chapter 70, part 5;

13          (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant  
14 to 15-32-701; or

15          (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or  
16 greater than 50 kilovolts.

17          (b) The term does not include a nuclear facility as defined in 75-20-1202.

18          ~~(12)~~ (11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,  
19 whether or not those uses are included in the water quality standards.

20          ~~(13)~~ (12) "High-quality waters" means all state waters, except:

21          (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by  
22 the board's classification rules; and

23          (b) surface waters that:

24           (i) are not capable of supporting any one of the designated uses for their classification; or

25           (ii) have zero flow or surface expression for more than 270 days during most years.

26          ~~(14)~~ (13) "Impaired water body" means a water body or stream segment for which sufficient credible  
27 data shows that the water body or stream segment is failing to achieve compliance with applicable water quality  
28 standards.

(15) (14) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(16) (15) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(17) (16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

(18) (17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

(19) (18) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(20) (19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

(21) (20) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

~~(22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.~~

~~(23) (21) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of nutrient standards variances, and the implementation of those standards, and variances~~

1 ~~together with~~ associated economic impacts.

2 ~~(24)~~ (22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,  
3 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or  
4 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

5 ~~(25)~~ (23) "Outstanding resource waters" means:

6 (a) state surface waters located wholly within the boundaries of areas designated as national parks or  
7 national wilderness areas as of October 1, 1995; or

8 (b) other surface waters or ground waters classified by the board under the provisions of 75-5-316  
9 and approved by the legislature.

10 ~~(26)~~ (24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a  
11 point source.

12 ~~(27)~~ (25) "Parameter" means a physical, biological, or chemical property of state water when a value of  
13 that property affects the quality of the state water.

14 ~~(28)~~ (26) "Person" means the state, a political subdivision of the state, institution, firm, corporation,  
15 partnership, individual, or other entity and includes persons resident in Canada.

16 ~~(29)~~ (27) "Point source" means a discernible, confined, and discrete conveyance, including but not  
17 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or  
18 other floating craft, from which pollutants are or may be discharged.

19 ~~(30)~~ (28) (a) "Pollution" means:

20 (i) contamination or other alteration of the physical, chemical, or biological properties of state waters  
21 that exceeds that permitted by Montana water quality standards, including but not limited to standards relating  
22 to change in temperature, taste, color, turbidity, or odor; or

23 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other  
24 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or  
25 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other  
26 wildlife.

27 (b) The term does not include:

28 (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge

1 permit rules adopted by the board under this chapter;

2 (ii) activities conducted under this chapter that comply with the conditions imposed by the department  
3 in short-term authorizations pursuant to 75-5-308;

4 (iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in  
5 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter  
6 11, part 1;

7 (iv) contamination of ground water within the boundaries of an underground mine using in situ coal  
8 gasification and operating in accordance with a permit issued under 82-4-221;

9 (c) Contamination referred to in subsections ~~(30)(b)(iii) and (30)(b)(iv)~~ (28)(b)(iii) and (28)(b)(iv) does  
10 not require a mixing zone.

11 ~~(31)~~ (29) "Sewage" means water-carried waste products from residences, public buildings, institutions,  
12 or other buildings, including discharge from human beings or animals, together with ground water infiltration  
13 and surface water present.

14 ~~(32)~~ (30) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or  
15 other wastes to an ultimate disposal point.

16 ~~(33)~~ (31) "Standard of performance" means a standard adopted by the board for the control of the  
17 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of  
18 the best available demonstrated control technology, processes, operating methods, or other alternatives,  
19 including, when practicable, a standard permitting no discharge of pollutants.

20 ~~(34)~~ (32) (a) "State waters" means a body of water, irrigation system, or drainage system, either  
21 surface or underground.

22 (b) The term does not apply to:

23 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

24 (ii) irrigation waters or land application disposal waters when the waters are used up within the  
25 irrigation or land application disposal system and the waters are not returned to state waters.

26 ~~(35)~~ (33) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in  
27 combination with narrative information, that supports a finding as to whether a water body is achieving  
28 compliance with applicable water quality standards.

~~(36)~~ (34) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

- (a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or
- (b) documented adverse pollution trends.

~~(37)~~ (35) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

~~(38)~~ (36) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(39)~~ (37) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

~~(40)~~ (38) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(41)~~ (39) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

~~(42)~~ (40) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704."

**Section 6.** Section 75-5-105, MCA, is amended to read:

**"75-5-105. Confidentiality of records.** Except as provided in 80-15-108, any information concerning sources of pollution that is furnished to the board or department or that is obtained by either of them is a matter



1 of public record and open to public use. However, any information unique to the owner or operator of a source  
2 of pollution that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be  
3 maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file  
4 a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the  
5 information to remain confidential. The department must be served in the action and may intervene as a party.  
6 Any information not intended to be public when submitted to the board or department must be submitted in  
7 writing and clearly marked as confidential. ~~Except as provided in 75-5-314, the~~ The data describing physical  
8 and chemical characteristics of a waste discharged to state waters may not be considered confidential. The  
9 board may use any information in compiling or publishing analyses or summaries relating to water pollution if  
10 the analyses or summaries do not identify any owner or operator of a source of pollution or reveal any  
11 information that is otherwise made confidential by this section."

12  
13 **Section 7.** Section 75-5-301, MCA, is amended to read:

14 ~~"75-5-301. Classification and standards for state waters.~~ Consistent with the provisions of 80-15-  
15 201 and this chapter, the board shall:

16 ~~(1) establish the classification of all state waters in accordance with their present and future most~~  
17 ~~beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an~~  
18 ~~aquatic ecosystem that includes salmonid or nonsalmonid fish;~~

19 ~~(2) formulate and adopt standards of water quality, giving consideration to the economics of waste~~  
20 ~~treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the~~  
21 ~~requirements of 75-5-312. Standards adopted by the board must meet the following requirements:~~

22 ~~(a) for carcinogens, the water quality standard for protection of human health must be the value~~  
23 ~~associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed  $1 \times$~~   
24  ~~$10^{-3}$  in the case of arsenic and  $1 \times 10^{-5}$  for other carcinogens. However, if a standard established at a risk level~~  
25 ~~of  $1 \times 10^{-3}$  for arsenic or  $1 \times 10^{-5}$  for other carcinogens violates the maximum contaminant level obtained from~~  
26 ~~40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.~~

27 ~~(b) standards for the protection of aquatic life do not apply to ground water.~~

28 ~~(c) nutrient water quality standards, whether numeric or narrative, apply only;~~

~~(i) to streams, except for ephemeral streams, with algae levels greater than a monthly average of 150 milligrams of chlorophyll-a per square meter based on field values, or a calibrated water quality model if field values are unavailable; and~~

~~(ii) between July 1 and September 30 of each calendar year.~~

~~(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;~~

~~(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified and requiring that mixing zones have:~~

~~(a) the smallest practicable size;~~

~~(b) a minimum practicable effect on water uses; and~~

~~(c) definable boundaries;~~

~~(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:~~

~~(a) provide a procedure for department review and authorization of degradation;~~

~~(b) establish criteria for the following:~~

~~(i) determining important economic or social development; and~~

~~(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;~~

~~(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303 (3). These criteria must be established in a manner that generally:~~

~~(i) equates significance with the potential for harm to human health, a beneficial use, or the environment;~~

~~(ii) considers both the quantity and the strength of the pollutant;~~

~~(iii) considers the length of time the degradation will occur;~~

~~(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less~~

harmful or less persistent.

~~(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the ground water mixing zone does not exceed:~~

~~(i) 7.5 milligrams per liter from sources other than sewage;~~

~~(ii) 5.0 milligrams per liter from sewage discharged from a system that does not use level two treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less;~~

~~(iii) 7.5 milligrams per liter from sewage discharged from a system using level two treatment, which must be defined in the rules; or~~

~~(iv) 7.5 milligrams per liter from sewage discharged from a system in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.~~

~~(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303 (2) and (3).~~

~~(7) adopt rules to implement this section."~~

**Section 7.** Section 75-5-317, MCA, is amended to read:

**"75-5-317. Nonsignificant activities.** (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

(a) existing activities that are nonpoint sources of pollution as of April 29, 1993;

(b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;

(c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental

1 protection agency-approved label and when existing and anticipated uses will be fully protected;

2 (d) changes in existing water quality resulting from an emergency or remedial activity that is designed  
3 to protect public health or the environment and is approved, authorized, or required by the department;

4 (e) changes in existing ground water quality resulting from treatment of a public water supply system,  
5 as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar  
6 means that is designed to protect the public health or the environment and that is approved, authorized, or  
7 required by the department;

8 (f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well  
9 or monitoring well drilling, development, or abandonment, if used according to department-approved water  
10 quality protection practices and if no discharge to surface water will occur;

11 (g) short-term changes in existing water quality resulting from activities authorized by the department  
12 pursuant to 75-5-308;

13 (h) land application of animal waste, domestic septage, or waste from public sewage treatment  
14 systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates  
15 are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

16 (i) use of gray water, as defined in 75-5-325, from nonpublic gray water reuse systems for irrigation  
17 during the growing season in accordance with gray water reuse rules adopted pursuant to 75-5-305;

18 (j) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a  
19 public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and  
20 constructed in accordance with Title 75, chapter 6;

21 (k) discharges of water to ground water from water well or monitoring well tests, hydrostatic pressure  
22 and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs,  
23 conducted in accordance with department-approved water quality protection practices;

24 (l) oil and gas drilling, production, abandonment, plugging, and restoration activities that do not result  
25 in discharges to surface water and that are performed in accordance with Title 82, chapter 10, or Title 82,  
26 chapter 11;

27 (m) short-term changes in existing water quality resulting from ordinary and everyday activities of  
28 humans or domesticated animals, including but not limited to:

- (i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;
- (ii) fording of streams or other bodies of water by vehicular or other means; and
- (iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;
- (n) coal and uranium prospecting that does not result in a discharge to surface water, that does not involve a test pit located in surface water or that may affect surface water, and that is performed in accordance with Title 82, chapter 4;
- (o) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;
- (p) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;
- (q) metallic and nonmetallic mineral exploration that does not result in a discharge to surface water and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;
- (r) stream-related construction projects or stream enhancement projects that result in temporary changes to water quality but do not result in long-term detrimental effects and that have been authorized pursuant to 75-5-318;
- (s) diversions or withdrawals of water established and recognized under Title 85, chapter 2;
- (t) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that are related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short term; and
- (u) DISCHARGES OF TOTAL PHOSPHORUS OR TOTAL NITROGEN THAT DO NOT:
- (i) CREATE CONDITIONS THAT ARE TOXIC OR HARMFUL TO HUMAN, ANIMAL, PLANT, AND AQUATIC LIFE;
- (ii) CREATE CONDITIONS THAT PRODUCE UNDESIRABLE AQUATIC LIFE; OR
- (iii) CAUSE MEASURABLE CHANGES IN AQUATIC LIFE; AND
- (u)(v) discharges that, after full mixing with the minimum 14-day average streamflow that occurs once every 5 years, result in algae levels less than or equal to a monthly average of 150 milligrams of chlorophyll-a

~~per square meter during the time period from July 1 through September 30 ANY OTHER ACTIVITY THAT IS~~  
~~NONSIGNIFICANT BECAUSE OF ITS LOW POTENTIAL FOR HARM TO HUMAN HEALTH OR TO THE ENVIRONMENT AND ITS~~  
~~CONFORMANCE WITH THE GUIDANCE FOUND IN 75-5-301(5)(c); and~~  
~~(u) (v) — any other activity that is nonsignificant because of its low potential for harm to human health or~~  
~~to the environment and its conformance with the guidance found in 75-5-301 (5)(c)."~~

**Section 8.** Section 75-5-320, MCA, is amended to read:

**"75-5-320. Temporary water quality standards variances.** (1) Except as provided in 75-5-222(2)  
~~and 75-5-313~~, the department may adopt rules providing criteria and procedures for the department to issue a  
temporary variance to water quality standards if:

- (a) a variance will not result in a lowering of currently attained, ambient water quality;
- (b) the department rules are consistent, as necessary, with federal rules that authorize states to adopt  
variances from standards, including but not limited to 40 CFR 131.14; and
- (c) (i) a permittee cannot reasonably expect to meet a water quality standard during the permit term  
for which the variance is approved; and  
(ii) a permit compliance schedule is not feasible to preclude the need for a variance during the permit  
term for which the variance is approved.

(2) In order to receive a temporary variance, a permittee shall evaluate facility operations and  
infrastructure to maximize pollutant reduction through an optimization study. The variance must require the  
implementation of optimization study actions as terms and conditions of the discharge permit.

(3) The department shall review a temporary variance issued pursuant to this section at least once  
every 5 years and may continue, modify, or terminate the temporary variance as a result of the review."

**NEW SECTION. Section 9. Repealer.** The following sections of the Montana Code Annotated are  
repealed:

75-5-313. Nutrient standards variances -- individual, general, and alternative.

75-5-314. Confidentiality of base numeric standards and nutrient standards variances.

75-5-319. Compliance schedule for base numeric nutrient standards.

1

2        NEW SECTION. SECTION 10. REPEALER. ARM 17.30.660 IS REPEALED.

3

4        NEW SECTION. SECTION 11. Codification instruction. [Sections 1 and 2] are intended to be codified  
5 as an integral part of Title 75, chapter 5, and the provisions of Title 75, chapter 5, apply to [sections 1 and 2].

6

7        NEW SECTION. SECTION 12. SAVING CLAUSE. [THIS ACT] DOES NOT AFFECT NUTRIENT STANDARDS  
8 VARIANCES GRANTED BEFORE [THE EFFECTIVE DATE OF THIS ACT], OR RIGHTS AND DUTIES THAT MATURED, PENALTIES  
9 THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS ACT].

10

11        NEW SECTION. SECTION 13. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

12

- END -



AN ACT ELIMINATING NUTRIENT CRITERIA FROM MONTANA WATER QUALITY STANDARDS; ELIMINATING VARIANCES AND COMPLIANCE SCHEDULES FOR NUTRIENTS; DIRECTING ADOPTION AND AMENDMENT OF ADMINISTRATIVE RULES; PROVIDING FOR A TRANSITION FOR NUTRIENT STANDARDS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-5-103, 75-5-105, 75-5-317, AND 75-5-320, MCA; REPEALING SECTIONS 75-5-313, 75-5-314, AND 75-5-319, MCA; REPEALING ARM 17.30.660; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**Section 1. Transition for nutrient standards.** (1) By March 1, 2022, the department of environmental quality shall adopt rules related to narrative nutrient standards in consultation with the nutrient work group.

(2) The rules shall provide for the development of an adaptive management program which provides for an incremental watershed approach for protecting and maintaining water quality, and that:

- (a) reasonably balances all factors impacting a water body;
- (b) prioritizes the minimization of phosphorus, taking into account site-specific conditions; and
- (c) identifies the appropriate response variables affected by nutrients and associated impact thresholds in accordance with the beneficial uses of the waterbody.

(3) In developing the rules in subsection (2), the department shall consider options pertaining to whether the point source is new or existing and whether the receiving water body is considered impaired or unimpaired.

**Section 2. Transition for nutrient standards -- department.** (1) Until final rules are adopted pursuant to [section 1], the department shall administer the discharge permitting program under 75-5-402 in a



manner consistent with ARM 17.30.637 and the intent of [this act].

(2) Any nutrient standards variances currently authorized and effective are hereby authorized and effective under 75-5-320 until otherwise amended or repealed.

**Section 3. Board to amend rules.** The board of environmental review shall amend ARM 17.30.201, 17.30.507, 17.30.516, 17.30.602, 17.30.619, 17.30.622, 17.30.623, 17.30.624, 17.30.625, 17.30.626, 17.30.627, 17.30.628, 17.30.629, 17.30.635, 17.30.702, and 17.30.715 to delete all references to department circular DEQ-12A, department circular DEQ-12B, base numeric nutrient standards, and nutrient standards variances.

**Section 4. Department to amend rules.** The department of environmental quality shall amend ARM 17.30.602 to delete all references to department circular DEQ-12A, department circular DEQ-12B, base numeric nutrient standards, and nutrient standards variances.

**Section 5.** Section 75-5-103, MCA, is amended to read:

**"75-5-103. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Associated supporting infrastructure" means:
  - (a) electric transmission and distribution facilities;
  - (b) pipeline facilities;
  - (c) aboveground ponds and reservoirs and underground storage reservoirs;
  - (d) rail transportation;
  - (e) aqueducts and diversion dams;
  - (f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or
  - (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

~~(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface~~

~~water that are adopted to protect the designated uses of a surface water body.~~

~~(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.~~

~~(3)(2)~~ "Board" means the board of environmental review provided for in 2-15-3502.

~~(4)(3)~~ "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(5)(4)~~ "Council" means the water pollution control advisory council provided for in 2-15-2107.

~~(6)(5)~~ (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(7)(6)~~ "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(8)(7)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

~~(9)(8)~~ "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(10)(9)~~ "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

~~(11)(10)~~ (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

- (i) generating electricity;
- (ii) producing gas derived from coal;
- (iii) producing liquid hydrocarbon products;
- (iv) refining crude oil or natural gas;
- (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;
- (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant

to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(12)~~(11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(13)~~(12) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

~~(14)~~(13) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

~~(15)~~(14) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(16)~~(15) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

~~(17)~~(16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

~~(18)~~ (17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

~~(19)~~(18) "Local department of health" means the staff, including health officers, employed by a county,

city, city-county, or district board of health.

~~(20)~~(19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(21)~~(20) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

~~(22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.~~

~~(23)~~(21) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of nutrient standards variances, and the implementation of those standards, and variances together with associated economic impacts.

~~(24)~~(22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(25)~~(23) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

~~(26)~~(24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(27)~~(25) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(28)~~(26) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(29)~~(27) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(30)~~(28) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the board under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221.

(c) Contamination referred to in subsection ~~(30)(b)(iii)~~ (28)(b)(iii) does not require a mixing zone.

~~(31)~~(29) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(32)~~(30) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(33)~~(31) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of

the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(34)~~(32) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

- (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or
- (ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(35)~~(33) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(36)~~(34) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

- (a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or
- (b) documented adverse pollution trends.

~~(37)~~(35) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

~~(38)~~(36) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(39)~~(37) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

~~(40)~~(38) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and

practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(41)~~(39) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

~~(42)~~(40) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704.

**75-5-103. (Effective on occurrence of contingency) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

- (1) "Associated supporting infrastructure" means:
  - (a) electric transmission and distribution facilities;
  - (b) pipeline facilities;
  - (c) aboveground ponds and reservoirs and underground storage reservoirs;
  - (d) rail transportation;
  - (e) aqueducts and diversion dams;
  - (f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or
  - (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.
- ~~(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface water that are adopted to protect the designated uses of a surface water body.~~
- ~~(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.~~
- ~~(3)~~(2) "Board" means the board of environmental review provided for in 2-15-3502.
- ~~(4)~~(3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.
- ~~(5)~~(4) "Council" means the water pollution control advisory council provided for in 2-15-2107.
- ~~(6)~~(5) (a) "Currently available data" means data that is readily available to the department at the time

a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(7)(6)~~ "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(8)(7)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

~~(9)(8)~~ "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(10)(9)~~ "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

~~(11)(10)~~ (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

- (i) generating electricity;
- (ii) producing gas derived from coal;
- (iii) producing liquid hydrocarbon products;
- (iv) refining crude oil or natural gas;
- (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;
- (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or
- (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(12)(11)~~ "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(13)(12)~~ "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by



the board's classification rules; and

(b) surface waters that:

- (i) are not capable of supporting any one of the designated uses for their classification; or
- (ii) have zero flow or surface expression for more than 270 days during most years.

~~(14)~~(13) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

~~(15)~~(14) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(16)~~(15) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

~~(17)~~(16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

~~(18)~~(17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

~~(19)~~(18) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(20)~~(19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(21)~~(20) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

~~(22)~~ "Nutrient standards variance" means numeric water quality criteria for nutrients based on a

~~determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.~~

~~(23)~~(21) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on ~~the base numeric nutrient standards, the development of nutrient standards variances, and the implementation of those standards, and variances~~ together with associated economic impacts.

~~(24)~~(22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(25)~~(23) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

~~(26)~~(24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(27)~~(25) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(28)~~(26) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(29)~~(27) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(30)~~(28) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating

to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the board under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1;

(iv) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221;

(c) Contamination referred to in subsections ~~(30)(b)(iii) and (30)(b)(iv)~~ (28)(b)(iii) and (28)(b)(iv) does not require a mixing zone.

~~(31)(29)~~ "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(32)(30)~~ "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(33)(31)~~ "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(34)(32)~~ (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(35)~~(33) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(36)~~(34) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

~~(37)~~(35) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

~~(38)~~(36) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(39)~~(37) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

~~(40)~~(38) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(41)~~(39) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

~~(42)~~(40) "Watershed advisory group" means a group of individuals who wish to participate in an

advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704."

**Section 6.** Section 75-5-105, MCA, is amended to read:

**"75-5-105. Confidentiality of records.** Except as provided in 80-15-108, any information concerning sources of pollution that is furnished to the board or department or that is obtained by either of them is a matter of public record and open to public use. However, any information unique to the owner or operator of a source of pollution that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the information to remain confidential. The department must be served in the action and may intervene as a party. Any information not intended to be public when submitted to the board or department must be submitted in writing and clearly marked as confidential. ~~Except as provided in 75-5-314, the~~ The data describing physical and chemical characteristics of a waste discharged to state waters may not be considered confidential. The board may use any information in compiling or publishing analyses or summaries relating to water pollution if the analyses or summaries do not identify any owner or operator of a source of pollution or reveal any information that is otherwise made confidential by this section."

**Section 7.** Section 75-5-317, MCA, is amended to read:

**"75-5-317. Nonsignificant activities.** (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

- (a) existing activities that are nonpoint sources of pollution as of April 29, 1993;
- (b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;

- (c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;
- (d) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;
- (e) changes in existing ground water quality resulting from treatment of a public water supply system, as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar means that is designed to protect the public health or the environment and that is approved, authorized, or required by the department;
- (f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department-approved water quality protection practices and if no discharge to surface water will occur;
- (g) short-term changes in existing water quality resulting from activities authorized by the department pursuant to 75-5-308;
- (h) land application of animal waste, domestic septage, or waste from public sewage treatment systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;
- (i) use of gray water, as defined in 75-5-325, from nonpublic gray water reuse systems for irrigation during the growing season in accordance with gray water reuse rules adopted pursuant to 75-5-305;
- (j) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and constructed in accordance with Title 75, chapter 6;
- (k) discharges of water to ground water from water well or monitoring well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in accordance with department-approved water quality protection practices;
- (l) oil and gas drilling, production, abandonment, plugging, and restoration activities that do not result in discharges to surface water and that are performed in accordance with Title 82, chapter 10, or Title 82, chapter 11;

(m) short-term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to:

- (i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;
- (ii) fording of streams or other bodies of water by vehicular or other means; and
- (iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;

(n) coal and uranium prospecting that does not result in a discharge to surface water, that does not involve a test pit located in surface water or that may affect surface water, and that is performed in accordance with Title 82, chapter 4;

(o) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;

(p) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;

(q) metallic and nonmetallic mineral exploration that does not result in a discharge to surface water and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;

(r) stream-related construction projects or stream enhancement projects that result in temporary changes to water quality but do not result in long-term detrimental effects and that have been authorized pursuant to 75-5-318;

(s) diversions or withdrawals of water established and recognized under Title 85, chapter 2;

(t) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that are related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short term; ~~and~~

(u) discharges of total phosphorus or total nitrogen that do not:

(i) create conditions that are toxic or harmful to human, animal, plant, and aquatic life;

(ii) create conditions that produce undesirable aquatic life; or

(iii) cause measurable changes in aquatic life; and

~~(u)(v) any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c)~~

~~(u) any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301 (5)(c)."~~

**Section 8.** Section 75-5-320, MCA, is amended to read:

**"75-5-320. Temporary water quality standards variances.** (1) Except as provided in 75-5-222(2) and ~~75-5-313~~, the department may adopt rules providing criteria and procedures for the department to issue a temporary variance to water quality standards if:

- (a) a variance will not result in a lowering of currently attained, ambient water quality;
  - (b) the department rules are consistent, as necessary, with federal rules that authorize states to adopt variances from standards, including but not limited to 40 CFR 131.14; and
  - (c) (i) a permittee cannot reasonably expect to meet a water quality standard during the permit term for which the variance is approved; and
    - (ii) a permit compliance schedule is not feasible to preclude the need for a variance during the permit term for which the variance is approved.
- (2) In order to receive a temporary variance, a permittee shall evaluate facility operations and infrastructure to maximize pollutant reduction through an optimization study. The variance must require the implementation of optimization study actions as terms and conditions of the discharge permit.
- (3) The department shall review a temporary variance issued pursuant to this section at least once every 5 years and may continue, modify, or terminate the temporary variance as a result of the review."

**Section 9. Repealer.** The following sections of the Montana Code Annotated are repealed:

- 75-5-313. Nutrient standards variances -- individual, general, and alternative.
- 75-5-314. Confidentiality of base numeric standards and nutrient standards variances.
- 75-5-319. Compliance schedule for base numeric nutrient standards.

**Section 10. Repealer.** ARM 17.30.660 is repealed.



**Section 9. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 75, chapter 5, and the provisions of Title 75, chapter 5, apply to [sections 1 and 2].

**Section 10. Saving clause.** [This act] does not affect nutrient standards variances granted before [the effective date of this act], or rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

**Section 11. Effective date.** [This act] is effective on passage and approval.

- END -

I hereby certify that the within bill,  
SB 358, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2021.

SENATE BILL NO. 358

INTRODUCED BY J. ESP, M. CUFFE

AN ACT ELIMINATING NUTRIENT CRITERIA FROM MONTANA WATER QUALITY STANDARDS; ELIMINATING VARIANCES AND COMPLIANCE SCHEDULES FOR NUTRIENTS; DIRECTING ADOPTION AND AMENDMENT OF ADMINISTRATIVE RULES; PROVIDING FOR A TRANSITION FOR NUTRIENT STANDARDS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-5-103, 75-5-105, 75-5-301, 75-5-317, AND 75-5-320, MCA; AND REPEALING SECTIONS 75-5-313, 75-5-314, AND 75-5-319, MCA; REPEALING ARM 17.30.660; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2023 Biennium

**Bill #** SB0358

**Title:** Repeal numeric nutrient standards for water quality

**Primary Sponsor:** Esp, John

**Status:** As Amended in House Committee

- ☐ Significant Local Gov Impact
 ☒ Needs to be included in HB 2
 ☐ Technical Concerns  
☐ Included in the Executive Budget
 ☐ Significant Long-Term Impacts
 ☐ Dedicated Revenue Form Attached

### FISCAL SUMMARY

|                                         | <u>FY 2022</u><br><u>Difference</u> | <u>FY 2023</u><br><u>Difference</u> | <u>FY 2024</u><br><u>Difference</u> | <u>FY 2025</u><br><u>Difference</u> |
|-----------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|-------------------------------------|
| <b>Expenditures:</b>                    |                                     |                                     |                                     |                                     |
| General Fund                            | \$0                                 | \$0                                 | \$0                                 | \$0                                 |
| State Special Revenue                   | \$78,352                            | \$88,531                            | \$88,531                            | \$88,531                            |
| <b>Revenue:</b>                         |                                     |                                     |                                     |                                     |
| General Fund                            | \$0                                 | \$0                                 | \$0                                 | \$0                                 |
| State Special Revenue                   | \$78,352                            | \$88,531                            | \$88,531                            | \$88,531                            |
| <b>Net Impact-General Fund Balance:</b> | <u>\$0</u>                          | <u>\$0</u>                          | <u>\$0</u>                          | <u>\$0</u>                          |

**Description of fiscal impact:** SB 358 requires the Department of Environmental Quality to develop rules that will eliminate numeric nutrient criteria from Montana's water quality standards and eliminate variances for nutrients. SB 358 also requires permittees to develop Adaptive Management Plans (AMP) in consultation with and reviewed by DEQ. As described in the assumptions below, this bill will have a fiscal impact to DEQ.

### FISCAL ANALYSIS

#### Assumptions:

#### **Department of Environmental Quality (DEQ)**

- During FY 2022 and prior to seeking rule initiation from the Board of Environmental Review, DEQ will engage stakeholders to undertake the necessary rulemaking to implement the provisions of SB 358. This rulemaking will also include the appropriate fee structure for DEQ's review of AMPs and will require 0.50 FTE (Environmental Science Specialist) and 0.25 FTE (Lawyer).
- Beginning in FY 2023, DEQ will provide oversight of AMPs as required by SB 358 which will include coordinating with the permittees on sampling and analysis plans, data analysis and modeling, as well as coordination with other facilities. DEQ will use existing resources to the greatest extent practicable; however,

**Fiscal Note Request – As Amended in House Committee***(continued)*

due the additional effort required for AMPs, DEQ may need up to 1.00 FTE (Environmental Science Specialist) to implement these provisions. The FTE will be funded with State Special Revenue collected from the fee structure developed in FY 2022.

|                                                                                   | <u>FY 2022<br/>Difference</u> | <u>FY 2023<br/>Difference</u> | <u>FY 2024<br/>Difference</u> | <u>FY 2025<br/>Difference</u> |
|-----------------------------------------------------------------------------------|-------------------------------|-------------------------------|-------------------------------|-------------------------------|
| <b><u>Fiscal Impact:</u></b>                                                      |                               |                               |                               |                               |
| FTE                                                                               | 0.75                          | 1.00                          | 1.00                          | 1.00                          |
| <b><u>Expenditures:</u></b>                                                       |                               |                               |                               |                               |
| Personal Services                                                                 | \$58,039                      | \$65,579                      | \$65,579                      | \$65,579                      |
| Benefits                                                                          | \$20,313                      | \$22,952                      | \$22,952                      | \$22,952                      |
| <b>TOTAL Expenditures</b>                                                         | <u>\$78,352</u>               | <u>\$88,531</u>               | <u>\$88,531</u>               | <u>\$88,531</u>               |
| <b><u>Funding of Expenditures:</u></b>                                            |                               |                               |                               |                               |
| State Special Revenue (02)                                                        | \$78,352                      | \$88,531                      | \$88,531                      | \$88,531                      |
| <b>TOTAL Funding of Exp.</b>                                                      | <u>\$78,352</u>               | <u>\$88,531</u>               | <u>\$88,531</u>               | <u>\$88,531</u>               |
| <b><u>Revenues:</u></b>                                                           |                               |                               |                               |                               |
| State Special Revenue (02)                                                        | \$0                           | \$0                           | \$0                           | \$0                           |
| <b>TOTAL Revenues</b>                                                             | <u>\$0</u>                    | <u>\$0</u>                    | <u>\$0</u>                    | <u>\$0</u>                    |
| <b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b> |                               |                               |                               |                               |
| State Special Revenue (02)                                                        | \$0                           | \$0                           | \$0                           | \$0                           |

**Effect on County or Other Local Revenues or Expenditures:**

1. Rural municipalities may not have the financial resources to develop and implement an Adaptive Management Plan, as well as the ongoing costs for monitoring and data collection. These entities will see an increase in operating costs.
2. DEQ would engage with stakeholders to determine whether payment of the fee constitutes a hardship.

\_\_\_\_\_  
*Sponsor's Initials*\_\_\_\_\_  
*Date*\_\_\_\_\_  
*Budget Director's Initials*\_\_\_\_\_  
*Date*

Amendments to Senate Bill No. 358  
2nd Reading/2nd House Copy

Requested by Rhonda Knudsen  
For the (H) Committee of the Whole

Prepared by Jason Mohr  
04/09/2021, 07:18:49

1. Page 20, line 27 through page 21, line 1.

**Following:** "~~(u)~~(v)" on line 27

**Strike:** remainder of line 27 through "30" on page 21, line 1

**Insert:** "any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c)"

- END -

Explanation - Note: Because the page and line numbers referred to in these amendment instructions are required to match the page and line numbers of the official bill version being amended, they will not necessarily match the page and line numbers shown in any related Amendments in Context document.

SENATE BILL NO. 358

INTRODUCED BY J. ESP

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING NUTRIENT CRITERIA FROM MONTANA WATER QUALITY STANDARDS; ELIMINATING VARIANCES AND COMPLIANCE SCHEDULES FOR NUTRIENTS; DIRECTING ADOPTION AND AMENDMENT OF ADMINISTRATIVE RULES; PROVIDING FOR A TRANSITION FOR NUTRIENT STANDARDS; PROVIDING RULEMAKING AUTHORITY ~~AND AN EFFECTIVE DATE~~; AMENDING SECTIONS 75-5-103, 75-5-105, ~~75-5-301~~, 75-5-317, AND 75-5-320, MCA; ~~AND REPEALING SECTIONS 75-5-313, 75-5-314, AND 75-5-319, MCA; REPEALING ARM 17.30.660; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE.~~"

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Transition for nutrient standards—~~board of environmental review.~~**

~~The board of environmental rule shall adopt rules related to nutrient standards in consultation with the department of environmental quality and the nutrient work group including:~~

~~(1) defining the terms "undesirable aquatic life" and "harmful" in a manner consistent with 75-5-301;~~

~~(2) developing an adaptive management program that provides an incremental approach for restoration and preservation of water quality in streams impaired by nutrients;~~

~~(3) developing implementation guidance that:~~

~~(a) applies water quality effluent limitations for nutrients, either nitrogen or phosphorus;~~

~~(b) considers reasonable potential for total phosphorus and nitrogen after a full mixing of the discharge with the minimum 14-day average streamflow that occurs once every 5 years in the receiving water body;~~

~~(c) for existing dischargers, considers reasonable potential based on the algae level specified in 75-5-301;~~

~~(d) for new dischargers, including existing dischargers with an increased source, considers reasonable potential based on the following:~~

~~(i) for discharges within the level III ecoregion as designated by the U.S. environmental protection agency that includes the northern Rocky Mountains, Canadian Rocky Mountains, Idaho batholith, middle Rocky Mountains, except for the level IV ecoregion of the Absaroka-Gallatin volcanic mountains:~~

~~(A) total phosphorus concentrations of 0.03 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 0.8 milligrams per liter;~~

~~(ii) for discharges within the level III ecoregion as designated by the U.S. environmental protection agency that includes the northwestern glaciated plains, northwestern great plains, and Wyoming basin, excluding the level IV ecoregions of the sweetgrass uplands, Milk River pothole uplands, Rocky Mountain front foothill potholes, foothill grasslands, river breaks, non-calcareous foothill grasslands, Shield-Smith River valleys, limy foothill grasslands, Pryor-Bighorn foothills, and unglaciated Montana high plains:~~

~~(A) total phosphorous concentrations of 0.15 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 1.3 milligrams per liter;~~

~~(iii) for discharges within the level IV ecoregion as designated by the U.S. environmental protection agency of the Absaroka-Gallatin volcanic mountains:~~

~~(A) total phosphorous concentrations of 0.105 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 0.80 milligrams per liter;~~

~~(iv) for discharges within the level IV ecoregions as designated by the U.S. environmental protection agency excluded from subsection (3)(d)(ii) except for the river breaks for which no nutrient effluent limitations apply:~~

~~(A) total phosphorous concentrations of 0.80 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 0.80 milligrams per liter;~~

~~(e) allows the department to develop reasonable potential guidelines based on concentrations or total phosphorous or total nitrogen greater than those provided in subsections (3)(c) and (3)(d) if:~~

~~(i) data demonstrate that existing concentrations of total phosphorous or total nitrogen exceed the concentrations provided in subsection (3)(a) through (3)(d) and that the discharge will not create conditions that are toxic or harmful to human, animal, plant, or aquatic life;~~

~~(ii) data demonstrate that existing algae levels exceed a monthly average of 150 milligrams of chlorophyll-a per square meter and that the discharge will not create conditions that are toxic or harmful to~~



human, animal, plant, or aquatic life; or

~~(iii) data demonstrate that the receiving waterbody can sustain algae levels greater than a monthly average of 150 milligrams of chlorophyll-a per square meter without creating conditions that are toxic or harmful to human, animal, plant, or aquatic life.~~

(1) By March 1, 2022, the department of environmental quality shall adopt rules related to narrative nutrient standards in consultation with the nutrient work group.

(2) The rules shall provide for the development of an adaptive management program which provides for an incremental watershed approach for protecting and maintaining water quality, and that:

(a) reasonably balances all factors impacting a water body;

(b) prioritizes the minimization of phosphorus, taking into account site-specific conditions; and

(c) identifies the appropriate response variables affected by nutrients and associated impact thresholds in accordance with the beneficial uses of the waterbody.

(3) In developing the rules in subsection (2), the department shall consider options pertaining to whether the point source is new or existing and whether the receiving water body is considered impaired or unimpaired.

NEW SECTION. Section 2. Transition for nutrient standards -- department. ~~Subject to board of environmental rulemaking pursuant to [section 1], the department of environmental quality shall implement water quality standards in a manner consistent with [this act] and consistent with [section 1].~~

(1) Until final rules are adopted pursuant to [section 1], the department shall administer the discharge permitting program under 75-5-402 in a manner consistent with ARM 17.30.637 and the intent of [this act].

(2) Any nutrient standards variances currently authorized and effective are hereby authorized and effective under 75-5-320 until otherwise amended or repealed.

NEW SECTION. Section 3. Board to amend rules. The board of environmental review shall amend ARM 17.30.201, 17.30.507, 17.30.516, 17.30.602, 17.30.619, 17.30.622, 17.30.623, 17.30.624, 17.30.625, 17.30.626, 17.30.627, 17.30.628, 17.30.629, 17.30.635, 17.30.702, and 17.30.715 to delete all references to department circular DEQ-12A, department circular DEQ-12B, base numeric nutrient standards, and nutrient

1 standards variances.

2

3 NEW SECTION. **Section 4. Department to amend rules.** The department of environmental quality

4 shall amend ARM 17.30.602 ~~and 17.30.660~~ to delete all references to department circular DEQ-12A,

5 department circular DEQ-12B, base numeric nutrient standards, and nutrient standards variances.

6

7 **Section 5.** Section 75-5-103, MCA, is amended to read:

8 **"75-5-103. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the  
9 following definitions apply:

10 (1) "Associated supporting infrastructure" means:

11 (a) electric transmission and distribution facilities;

12 (b) pipeline facilities;

13 (c) aboveground ponds and reservoirs and underground storage reservoirs;

14 (d) rail transportation;

15 (e) aqueducts and diversion dams;

16 (f) devices or equipment associated with the delivery of an energy form or product produced at an  
17 energy development project; or

18 (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy  
19 development project.

20 ~~(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface~~  
21 ~~water that are adopted to protect the designated uses of a surface water body.~~

22 ~~(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite~~  
23 ~~that are adopted to protect human health.~~

24 ~~(3) (2)~~ (2) "Board" means the board of environmental review provided for in 2-15-3502.

25 ~~(4) (3)~~ (3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,  
26 or other wastes, creating a hazard to human health.

27 ~~(5) (4)~~ (4) "Council" means the water pollution control advisory council provided for in 2-15-2107.

28 ~~(6) (5)~~ (5) (a) "Currently available data" means data that is readily available to the department at the time

1 a decision is made, including information supporting its previous lists of water bodies that are threatened or  
2 impaired.

3 (b) The term does not mean new data to be obtained as a result of department efforts.

4 ~~(7)~~ (6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for  
5 a parameter. The term does not include those changes in water quality determined to be nonsignificant  
6 pursuant to 75-5-301(5)(c).

7 ~~(8)~~ (7) "Department" means the department of environmental quality provided for in 2-15-3501.

8 ~~(9)~~ (8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and  
9 includes sewage systems and treatment works.

10 ~~(10)~~ (9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of  
11 chemical, physical, biological, and other constituents that are discharged into state waters.

12 ~~(11)~~ (10) (a) "Energy development project" means each plant, unit, or other development and  
13 associated developments, including any associated supporting infrastructure, designed for or capable of:

14 (i) generating electricity;

15 (ii) producing gas derived from coal;

16 (iii) producing liquid hydrocarbon products;

17 (iv) refining crude oil or natural gas;

18 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax  
19 incentive pursuant to Title 15, chapter 70, part 5;

20 (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant  
21 to 15-32-701; or

22 (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or  
23 greater than 50 kilovolts.

24 (b) The term does not include a nuclear facility as defined in 75-20-1202.

25 ~~(12)~~ (11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,  
26 whether or not those uses are included in the water quality standards.

27 ~~(13)~~ (12) "High-quality waters" means all state waters, except:

28 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by

1 the board's classification rules; and

2 (b) surface waters that:

3 (i) are not capable of supporting any one of the designated uses for their classification; or

4 (ii) have zero flow or surface expression for more than 270 days during most years.

5 ~~(14)~~ (13) "Impaired water body" means a water body or stream segment for which sufficient credible  
6 data shows that the water body or stream segment is failing to achieve compliance with applicable water quality  
7 standards.

8 ~~(15)~~ (14) "Industrial waste" means a waste substance from the process of business or industry or from  
9 the development of any natural resource, together with any sewage that may be present.

10 ~~(16)~~ (15) "Interested person" means a person who has a real property interest, a water right, or an  
11 economic interest that is or may be directly and adversely affected by the department's preliminary decision  
12 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested  
13 authorization to degrade high-quality waters.

14 ~~(17)~~ (16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to  
15 one of its existing or future nonpoint sources or to natural background sources.

16 ~~(18)~~ (17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a  
17 violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the  
18 maximum change that can occur from the best practicable condition in a surface water without causing a  
19 violation of the surface water quality standards.

20 ~~(19)~~ (18) "Local department of health" means the staff, including health officers, employed by a county,  
21 city, city-county, or district board of health.

22 ~~(20)~~ (19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,  
23 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,  
24 thallium, and zinc.

25 ~~(21)~~ (20) "Mixing zone" means an area established in a permit or final decision on nondegradation  
26 issued by the department where water quality standards may be exceeded, subject to conditions that are  
27 imposed by the department and that are consistent with the rules adopted by the board.

28 ~~(22)~~ "Nutrient standards variance" means numeric water quality criteria for nutrients based on a

~~determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.~~

~~(23)~~ (21) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on ~~the base numeric nutrient standards, the development of nutrient standards variances, and the implementation of those standards, and variances~~ together with associated economic impacts.

~~(24)~~ (22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(25)~~ (23) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

~~(26)~~ (24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(27)~~ (25) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(28)~~ (26) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(29)~~ (27) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(30)~~ (28) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating

1 to change in temperature, taste, color, turbidity, or odor; or

2 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other  
3 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or  
4 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other  
5 wildlife.

6 (b) The term does not include:

7 (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge  
8 permit rules adopted by the board under this chapter;

9 (ii) activities conducted under this chapter that comply with the conditions imposed by the department  
10 in short-term authorizations pursuant to 75-5-308;

11 (iii) contamination of ground water within the boundaries of an underground mine using in situ coal  
12 gasification and operating in accordance with a permit issued under 82-4-221.

13 (c) Contamination referred to in subsection ~~(30)(b)(iii)~~ (28)(b)(iii) does not require a mixing zone.

14 ~~(31)~~ (29) "Sewage" means water-carried waste products from residences, public buildings, institutions,  
15 or other buildings, including discharge from human beings or animals, together with ground water infiltration  
16 and surface water present.

17 ~~(32)~~ (30) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or  
18 other wastes to an ultimate disposal point.

19 ~~(33)~~ (31) "Standard of performance" means a standard adopted by the board for the control of the  
20 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of  
21 the best available demonstrated control technology, processes, operating methods, or other alternatives,  
22 including, when practicable, a standard permitting no discharge of pollutants.

23 ~~(34)~~ (32) (a) "State waters" means a body of water, irrigation system, or drainage system, either  
24 surface or underground.

25 (b) The term does not apply to:

26 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

27 (ii) irrigation waters or land application disposal waters when the waters are used up within the  
28 irrigation or land application disposal system and the waters are not returned to state waters.

~~(35)~~ (33) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(36)~~ (34) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

~~(37)~~ (35) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

~~(38)~~ (36) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(39)~~ (37) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

~~(40)~~ (38) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(41)~~ (39) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

~~(42)~~ (40) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704.

**75-5-103. (Effective on occurrence of contingency) Definitions.** Unless the context requires

1 otherwise, in this chapter, the following definitions apply:

2 (1) "Associated supporting infrastructure" means:

3 (a) electric transmission and distribution facilities;

4 (b) pipeline facilities;

5 (c) aboveground ponds and reservoirs and underground storage reservoirs;

6 (d) rail transportation;

7 (e) aqueducts and diversion dams;

8 (f) devices or equipment associated with the delivery of an energy form or product produced at an  
9 energy development project; or

10 (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy  
11 development project.

12 ~~(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface~~  
13 ~~water that are adopted to protect the designated uses of a surface water body.~~

14 ~~(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite~~  
15 ~~that are adopted to protect human health.~~

16 ~~(3) (2)~~ "Board" means the board of environmental review provided for in 2-15-3502.

17 ~~(4) (3)~~ "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,  
18 or other wastes, creating a hazard to human health.

19 ~~(5) (4)~~ "Council" means the water pollution control advisory council provided for in 2-15-2107.

20 ~~(6) (5)~~ (a) "Currently available data" means data that is readily available to the department at the time  
21 a decision is made, including information supporting its previous lists of water bodies that are threatened or  
22 impaired.

23 (b) The term does not mean new data to be obtained as a result of department efforts.

24 ~~(7) (6)~~ "Degradation" means a change in water quality that lowers the quality of high-quality waters for  
25 a parameter. The term does not include those changes in water quality determined to be nonsignificant  
26 pursuant to 75-5-301(5)(c).

27 ~~(8) (7)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

28 ~~(9) (8)~~ "Disposal system" means a system for disposing of sewage, industrial, or other wastes and



1 includes sewage systems and treatment works.

2 ~~(10)~~ (9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of  
3 chemical, physical, biological, and other constituents that are discharged into state waters.

4 ~~(11)~~ (10) (a) "Energy development project" means each plant, unit, or other development and  
5 associated developments, including any associated supporting infrastructure, designed for or capable of:

6 (i) generating electricity;

7 (ii) producing gas derived from coal;

8 (iii) producing liquid hydrocarbon products;

9 (iv) refining crude oil or natural gas;

10 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax  
11 incentive pursuant to Title 15, chapter 70, part 5;

12 (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant  
13 to 15-32-701; or

14 (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or  
15 greater than 50 kilovolts.

16 (b) The term does not include a nuclear facility as defined in 75-20-1202.

17 ~~(12)~~ (11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,  
18 whether or not those uses are included in the water quality standards.

19 ~~(13)~~ (12) "High-quality waters" means all state waters, except:

20 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by  
21 the board's classification rules; and

22 (b) surface waters that:

23 (i) are not capable of supporting any one of the designated uses for their classification; or

24 (ii) have zero flow or surface expression for more than 270 days during most years.

25 ~~(14)~~ (13) "Impaired water body" means a water body or stream segment for which sufficient credible  
26 data shows that the water body or stream segment is failing to achieve compliance with applicable water quality  
27 standards.

28 ~~(15)~~ (14) "Industrial waste" means a waste substance from the process of business or industry or from

1 the development of any natural resource, together with any sewage that may be present.

2 ~~(16)~~ (15) "Interested person" means a person who has a real property interest, a water right, or an  
3 economic interest that is or may be directly and adversely affected by the department's preliminary decision  
4 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested  
5 authorization to degrade high-quality waters.

6 ~~(17)~~ (16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to  
7 one of its existing or future nonpoint sources or to natural background sources.

8 ~~(18)~~ (17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a  
9 violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the  
10 maximum change that can occur from the best practicable condition in a surface water without causing a  
11 violation of the surface water quality standards.

12 ~~(19)~~ (18) "Local department of health" means the staff, including health officers, employed by a county,  
13 city, city-county, or district board of health.

14 ~~(20)~~ (19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,  
15 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,  
16 thallium, and zinc.

17 ~~(21)~~ (20) "Mixing zone" means an area established in a permit or final decision on nondegradation  
18 issued by the department where water quality standards may be exceeded, subject to conditions that are  
19 imposed by the department and that are consistent with the rules adopted by the board.

20 ~~(22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a~~  
21 ~~determination that base numeric nutrient standards cannot be achieved because of economic impacts or~~  
22 ~~because of the limits of technology. The term includes individual, general, and alternative nutrient standards~~  
23 ~~variances in accordance with 75-5-313.~~

24 ~~(23)~~ (21) "Nutrient work group" means an advisory work group, convened by the department,  
25 representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and  
26 other interested parties that will advise the department on the base numeric nutrient standards, the  
27 development of nutrient standards variances, and the implementation of those standards, and variances  
28 together with associated economic impacts.

~~(24)~~ (22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(25)~~ (23) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

~~(26)~~ (24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(27)~~ (25) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(28)~~ (26) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(29)~~ (27) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(30)~~ (28) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters that exceeds that permitted by Montana water quality standards, including but not limited to standards relating to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the board under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1;

(iv) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221;

(c) Contamination referred to in subsections ~~(30)(b)(iii) and (30)(b)(iv)~~ (28)(b)(iii) and (28)(b)(iv) does not require a mixing zone.

~~(31)~~ (29) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(32)~~ (30) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(33)~~ (31) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(34)~~ (32) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(35)~~ (33) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(36)~~ (34) "Threatened water body" means a water body or stream segment for which sufficient credible

1 data and calculated increases in loads show that the water body or stream segment is fully supporting its  
2 designated uses but threatened for a particular designated use because of:

- 3 (a) proposed sources that are not subject to pollution prevention or control actions required by a  
4 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or  
5 (b) documented adverse pollution trends.

6 ~~(37)~~ (35) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations  
7 for point sources and load allocations for both nonpoint sources and natural background sources established at  
8 a level necessary to achieve compliance with applicable surface water quality standards.

9 ~~(38)~~ (36) "Treatment works" means works, including sewage lagoons, installed for treating or holding  
10 sewage, industrial wastes, or other wastes.

11 ~~(39)~~ (37) "Waste load allocation" means the portion of a receiving water's loading capacity that is  
12 allocated to one of its existing or future point sources.

13 ~~(40)~~ (38) "Water quality protection practices" means those activities, prohibitions, maintenance  
14 procedures, or other management practices applied to point and nonpoint sources designed to protect,  
15 maintain, and improve the quality of state waters. Water quality protection practices include but are not limited  
16 to treatment requirements, standards of performance, effluent standards, and operating procedures and  
17 practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

18 ~~(41)~~ (39) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or  
19 otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

20 ~~(42)~~ (40) "Watershed advisory group" means a group of individuals who wish to participate in an  
21 advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the  
22 development of TMDLs under 75-5-703, including those groups or individuals requested by the department to  
23 participate in an advisory capacity as provided in 75-5-704."

24  
25 **Section 6.** Section 75-5-105, MCA, is amended to read:

26 **"75-5-105. Confidentiality of records.** Except as provided in 80-15-108, any information concerning  
27 sources of pollution that is furnished to the board or department or that is obtained by either of them is a matter  
28 of public record and open to public use. However, any information unique to the owner or operator of a source

1 of pollution that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be  
2 maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file  
3 a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the  
4 information to remain confidential. The department must be served in the action and may intervene as a party.  
5 Any information not intended to be public when submitted to the board or department must be submitted in  
6 writing and clearly marked as confidential. ~~Except as provided in 75-5-314, the~~ The data describing physical  
7 and chemical characteristics of a waste discharged to state waters may not be considered confidential. The  
8 board may use any information in compiling or publishing analyses or summaries relating to water pollution if  
9 the analyses or summaries do not identify any owner or operator of a source of pollution or reveal any  
10 information that is otherwise made confidential by this section."

11  
12 **Section 7.** Section 75-5-301, MCA, is amended to read:

13 ~~"75-5-301. Classification and standards for state waters. Consistent with the provisions of 80-15-~~  
14 ~~201 and this chapter, the board shall:~~

15 ~~(1) establish the classification of all state waters in accordance with their present and future most~~  
16 ~~beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an~~  
17 ~~aquatic ecosystem that includes salmonid or nonsalmonid fish;~~

18 ~~(2) formulate and adopt standards of water quality, giving consideration to the economics of waste~~  
19 ~~treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the~~  
20 ~~requirements of 75-5-312. Standards adopted by the board must meet the following requirements:~~

21 ~~(a) for carcinogens, the water quality standard for protection of human health must be the value~~  
22 ~~associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed  $1 \times$~~   
23  ~~$10^{-3}$  in the case of arsenic and  $1 \times 10^{-5}$  for other carcinogens. However, if a standard established at a risk level~~  
24 ~~of  $1 \times 10^{-3}$  for arsenic or  $1 \times 10^{-5}$  for other carcinogens violates the maximum contaminant level obtained from~~  
25 ~~40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.~~

26 ~~(b) standards for the protection of aquatic life do not apply to ground water.~~

27 ~~(c) nutrient water quality standards, whether numeric or narrative, apply only:~~

28 ~~(i) to streams, except for ephemeral streams, with algae levels greater than a monthly average of 150~~

~~milligrams of chlorophyll-a per square meter based on field values, or a calibrated water quality model if field values are unavailable; and~~

~~(ii) between July 1 and September 30 of each calendar year.~~

~~(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;~~

~~(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified and requiring that mixing zones have:~~

~~(a) the smallest practicable size;~~

~~(b) a minimum practicable effect on water uses; and~~

~~(c) definable boundaries;~~

~~(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:~~

~~(a) provide a procedure for department review and authorization of degradation;~~

~~(b) establish criteria for the following:~~

~~(i) determining important economic or social development; and~~

~~(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;~~

~~(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303(3). These criteria must be established in a manner that generally:~~

~~(i) equates significance with the potential for harm to human health, a beneficial use, or the environment;~~

~~(ii) considers both the quantity and the strength of the pollutant;~~

~~(iii) considers the length of time the degradation will occur;~~

~~(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less harmful or less persistent.~~

~~(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the ground water mixing zone does not exceed:~~

~~(i) 7.5 milligrams per liter from sources other than sewage;~~

~~(ii) 5.0 milligrams per liter from sewage discharged from a system that does not use level two treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less;~~

~~(iii) 7.5 milligrams per liter from sewage discharged from a system using level two treatment, which must be defined in the rules; or~~

~~(iv) 7.5 milligrams per liter from sewage discharged from a system in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.~~

~~(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high-quality waters under the policy established in 75-5-303(2) and (3).~~

~~(7) adopt rules to implement this section."~~

**Section 7.** Section 75-5-317, MCA, is amended to read:

**"75-5-317. Nonsignificant activities.** (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

(a) existing activities that are nonpoint sources of pollution as of April 29, 1993;

(b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;

(c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;



(d) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;

(e) changes in existing ground water quality resulting from treatment of a public water supply system, as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar means that is designed to protect the public health or the environment and that is approved, authorized, or required by the department;

(f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well or monitoring well drilling, development, or abandonment, if used according to department-approved water quality protection practices and if no discharge to surface water will occur;

(g) short-term changes in existing water quality resulting from activities authorized by the department pursuant to 75-5-308;

(h) land application of animal waste, domestic septage, or waste from public sewage treatment systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

(i) use of gray water, as defined in 75-5-325, from nonpublic gray water reuse systems for irrigation during the growing season in accordance with gray water reuse rules adopted pursuant to 75-5-305;

(j) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and constructed in accordance with Title 75, chapter 6;

(k) discharges of water to ground water from water well or monitoring well tests, hydrostatic pressure and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs, conducted in accordance with department-approved water quality protection practices;

(l) oil and gas drilling, production, abandonment, plugging, and restoration activities that do not result in discharges to surface water and that are performed in accordance with Title 82, chapter 10, or Title 82, chapter 11;

(m) short-term changes in existing water quality resulting from ordinary and everyday activities of humans or domesticated animals, including but not limited to:

(i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;

- 1 (ii) fording of streams or other bodies of water by vehicular or other means; and
- 2 (iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated
- 3 animals;
- 4 (n) coal and uranium prospecting that does not result in a discharge to surface water, that does not
- 5 involve a test pit located in surface water or that may affect surface water, and that is performed in accordance
- 6 with Title 82, chapter 4;
- 7 (o) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle
- 8 graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part
- 9 5;
- 10 (p) hazardous waste management facilities permitted and operated in accordance with Title 75,
- 11 chapter 10, part 4;
- 12 (q) metallic and nonmetallic mineral exploration that does not result in a discharge to surface water
- 13 and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;
- 14 (r) stream-related construction projects or stream enhancement projects that result in temporary
- 15 changes to water quality but do not result in long-term detrimental effects and that have been authorized
- 16 pursuant to 75-5-318;
- 17 (s) diversions or withdrawals of water established and recognized under Title 85, chapter 2;
- 18 (t) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that
- 19 are related to existing water rights and that are within wilderness areas so long as existing and anticipated
- 20 beneficial uses are protected and as long as the changes in existing water quality relative to the project are
- 21 short term; ~~and~~
- 22 (u) discharges of total phosphorus or total nitrogen that do not:
- 23 (i) create conditions that are toxic or harmful to human, animal, plant, and aquatic life;
- 24 (ii) create conditions that produce undesirable aquatic life; or
- 25 (iii) cause measurable changes in aquatic life; and
- 26 ~~(u)(v)~~ discharges that, after full mixing with the minimum 14-day average streamflow that occurs once
- 27 every 5 years, result in algae levels less than or equal to a monthly average of 150 milligrams of chlorophyll-a
- 28 per square meter during the time period from July 1 through September 30; ~~and~~

~~(u) (v) —any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c)."~~

**Section 8.** Section 75-5-320, MCA, is amended to read:

**"75-5-320. Temporary water quality standards variances.** (1) Except as provided in 75-5-222(2) and ~~75-5-313~~, the department may adopt rules providing criteria and procedures for the department to issue a temporary variance to water quality standards if:

(a) a variance will not result in a lowering of currently attained, ambient water quality;

(b) the department rules are consistent, as necessary, with federal rules that authorize states to adopt variances from standards, including but not limited to 40 CFR 131.14; and

(c) (i) a permittee cannot reasonably expect to meet a water quality standard during the permit term for which the variance is approved; and

(ii) a permit compliance schedule is not feasible to preclude the need for a variance during the permit term for which the variance is approved.

(2) In order to receive a temporary variance, a permittee shall evaluate facility operations and infrastructure to maximize pollutant reduction through an optimization study. The variance must require the implementation of optimization study actions as terms and conditions of the discharge permit.

(3) The department shall review a temporary variance issued pursuant to this section at least once every 5 years and may continue, modify, or terminate the temporary variance as a result of the review."

**NEW SECTION. Section 9. Repealer.** The following sections of the Montana Code Annotated are repealed:

75-5-313. Nutrient standards variances -- individual, general, and alternative.

75-5-314. Confidentiality of base numeric standards and nutrient standards variances.

75-5-319. Compliance schedule for base numeric nutrient standards.

**NEW SECTION. Section 10. Repealer.** ARM 17.30.660 is repealed.

1            NEW SECTION. Section 11. Codification instruction. [Sections 1 and 2] are intended to be codified  
2 as an integral part of Title 75, chapter 5, and the provisions of Title 75, chapter 5, apply to [sections 1 and 2].

3  
4            NEW SECTION. Section 12. Saving clause. [This act] does not affect nutrient standards variances  
5 granted before [the effective date of this act], or rights and duties that matured, penalties that were incurred, or  
6 proceedings that were begun before [the effective date of this act].

7  
8            NEW SECTION. Section 13. {standard} Effective date. [This act] is effective on passage and  
9 approval.

10            - END -

SENATE BILL NO. 358

INTRODUCED BY J. ESP, M. CUFFE

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING NUTRIENT CRITERIA FROM MONTANA WATER QUALITY STANDARDS; ELIMINATING VARIANCES AND COMPLIANCE SCHEDULES FOR NUTRIENTS; DIRECTING ADOPTION AND AMENDMENT OF ADMINISTRATIVE RULES; PROVIDING FOR A TRANSITION FOR NUTRIENT STANDARDS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 75-5-103, 75-5-105, ~~75-5-301~~, 75-5-317, AND 75-5-320, MCA; ~~AND REPEALING SECTIONS 75-5-313, 75-5-314, AND 75-5-319, MCA; REPEALING ARM 17.30.660; AND PROVIDING AN IMMEDIATE~~ EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. **Section 1. Transition for nutrient standards -- ~~board of environmental review.~~**

The ~~board of environmental rule~~ shall adopt rules related to nutrient standards in consultation with the department of environmental quality and the nutrient work group including:

(1) ~~defining the terms "undesirable aquatic life" and "harmful" in a manner consistent with 75-5-301 ;~~

(2) ~~developing an adaptive management program that provides an incremental approach for restoration and preservation of water quality in streams impaired by nutrients;~~

(3) ~~developing implementation guidance that:~~

(a) ~~applies water quality effluent limitations for nutrients, either nitrogen or phosphorus;~~

(b) ~~considers reasonable potential for total phosphorus and nitrogen after a full mixing of the discharge with the minimum 14-day average streamflow that occurs once every 5 years in the receiving water body;~~

(c) ~~for existing dischargers, considers reasonable potential based on the algae level specified in 75-5-301;~~

(d) ~~for new dischargers, including existing dischargers with an increased source, considers reasonable potential based on the following:~~

~~(i) for discharges within the level III ecoregion as designated by the U.S. environmental protection agency that includes the northern Rocky Mountains, Canadian Rocky Mountains, Idaho batholith, middle Rocky Mountains, except for the level IV ecoregion of the Absaroka-Gallatin volcanic mountains:~~

~~(A) total phosphorus concentrations of 0.03 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 0.8 milligrams per liter;~~

~~(ii) for discharges within the level III ecoregion as designated by the U.S. environmental protection agency that includes the northwestern glaciated plains, northwestern great plains, and Wyoming basin, excluding the level IV ecoregions of the sweetgrass uplands, Milk River pothole uplands, Rocky Mountain front foothill potholes, foothill grasslands, river breaks, non-calcareous foothill grasslands, Shield-Smith River valleys, limy foothill grasslands, Pryor-Bighorn foothills, and unglaciated Montana high plains:~~

~~(A) total phosphorous concentrations of 0.15 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 1.3 milligrams per liter;~~

~~(iii) for discharges within the level IV ecoregion as designated by the U.S. environmental protection agency of the Absaroka-Gallatin volcanic mountains:~~

~~(A) total phosphorous concentrations of 0.105 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 0.80 milligrams per liter;~~

~~(iv) for discharges within the level IV ecoregions as designated by the U.S. environmental protection agency excluded from subsection (3)(d)(ii) except for the river breaks for which no nutrient effluent limitations apply:~~

~~(A) total phosphorous concentrations of 0.80 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 0.80 milligrams per liter;~~

~~(e) allows the department to develop reasonable potential guidelines based on concentrations or total phosphorous or total nitrogen greater than those provided in subsections (3)(c) and (3)(d) if:~~

~~(i) data demonstrate that existing concentrations of total phosphorous or total nitrogen exceed the concentrations provided in subsection (3)(a) through (3)(d) and that the discharge will not create conditions that are toxic or harmful to human, animal, plant, or aquatic life;~~

~~(ii) data demonstrate that existing algae levels exceed a monthly average of 150 milligrams of chlorophyll-a per square meter and that the discharge will not create conditions that are toxic or harmful to~~

1 human, animal, plant, or aquatic life; or

2 ~~(iii) data demonstrate that the receiving waterbody can sustain algae levels greater than a monthly~~  
3 ~~average of 150 milligrams of chlorophyll-a per square meter without creating conditions that are toxic or harmful~~  
4 ~~to human, animal, plant, or aquatic life.~~

5 (1) BY MARCH 1, 2022, THE DEPARTMENT OF ENVIRONMENTAL QUALITY SHALL ADOPT RULES RELATED TO  
6 NARRATIVE NUTRIENT STANDARDS IN CONSULTATION WITH THE NUTRIENT WORK GROUP.

7 (2) THE RULES SHALL PROVIDE FOR THE DEVELOPMENT OF AN ADAPTIVE MANAGEMENT PROGRAM WHICH  
8 PROVIDES FOR AN INCREMENTAL WATERSHED APPROACH FOR PROTECTING AND MAINTAINING WATER QUALITY, AND  
9 THAT:

10 (A) REASONABLY BALANCES ALL FACTORS IMPACTING A WATER BODY;

11 (B) PRIORITIZES THE MINIMIZATION OF PHOSPHORUS, TAKING INTO ACCOUNT SITE-SPECIFIC CONDITIONS; AND

12 (C) IDENTIFIES THE APPROPRIATE RESPONSE VARIABLES AFFECTED BY NUTRIENTS AND ASSOCIATED IMPACT  
13 THRESHOLDS IN ACCORDANCE WITH THE BENEFICIAL USES OF THE WATERBODY.

14 (3) IN DEVELOPING THE RULES IN SUBSECTION (2), THE DEPARTMENT SHALL CONSIDER OPTIONS PERTAINING  
15 TO WHETHER THE POINT SOURCE IS NEW OR EXISTING AND WHETHER THE RECEIVING WATER BODY IS CONSIDERED  
16 IMPAIRED OR UNIMPAIRED.

17  
18 NEW SECTION. Section 2. Transition for nutrient standards -- department. ~~Subject to board of~~  
19 ~~environmental rulemaking pursuant to [section 1], the department of environmental quality shall implement~~  
20 ~~water quality standards in a manner consistent with [ this act ] and consistent with [section 1].~~ (1) UNTIL FINAL  
21 RULES ARE ADOPTED PURSUANT TO [SECTION 1], THE DEPARTMENT SHALL ADMINISTER THE DISCHARGE PERMITTING  
22 PROGRAM UNDER 75-5-402 IN A MANNER CONSISTENT WITH ARM 17.30.637 AND THE INTENT OF [THIS ACT].

23 (2) ANY NUTRIENT STANDARDS VARIANCES CURRENTLY AUTHORIZED AND EFFECTIVE ARE HEREBY  
24 AUTHORIZED AND EFFECTIVE UNDER 75-5-320 UNTIL OTHERWISE AMENDED OR REPEALED.

25  
26 NEW SECTION. Section 3. Board to amend rules. The board of environmental review shall amend  
27 ARM 17.30.201, 17.30.507, 17.30.516, 17.30.602, 17.30.619, 17.30.622, 17.30.623, 17.30.624, 17.30.625,  
28 17.30.626, 17.30.627, 17.30.628, 17.30.629, 17.30.635, 17.30.702, and 17.30.715 to delete all references to

1 department circular DEQ-12A, department circular DEQ-12B, base numeric nutrient standards, and nutrient  
2 standards variances.

3  
4 NEW SECTION. **Section 4. Department to amend rules.** The department of environmental quality  
5 shall amend ARM 17.30.602 ~~and 17.30.660~~ to delete all references to department circular DEQ-12A,  
6 department circular DEQ-12B, base numeric nutrient standards, and nutrient standards variances.

7  
8 **Section 5.** Section 75-5-103, MCA, is amended to read:

9 **"75-5-103. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the  
10 following definitions apply:

11 (1) "Associated supporting infrastructure" means:

12 (a) electric transmission and distribution facilities;

13 (b) pipeline facilities;

14 (c) aboveground ponds and reservoirs and underground storage reservoirs;

15 (d) rail transportation;

16 (e) aqueducts and diversion dams;

17 (f) devices or equipment associated with the delivery of an energy form or product produced at an  
18 energy development project; or

19 (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy  
20 development project.

21 ~~(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface~~  
22 ~~water that are adopted to protect the designated uses of a surface water body.~~

23 ~~(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite~~  
24 ~~that are adopted to protect human health.~~

25 ~~(3) (2)~~ "Board" means the board of environmental review provided for in 2-15-3502.

26 ~~(4) (3)~~ "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,  
27 or other wastes, creating a hazard to human health.

28 ~~(5) (4)~~ "Council" means the water pollution control advisory council provided for in 2-15-2107.



~~(6)~~ (5) (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(7)~~ (6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(8)~~ (7) "Department" means the department of environmental quality provided for in 2-15-3501.

~~(9)~~ (8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(10)~~ (9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

~~(11)~~ (10) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;

(iii) producing liquid hydrocarbon products;

(iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(12)~~ (11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(13)~~ (12) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

~~(14)~~ (13) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

~~(15)~~ (14) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

~~(16)~~ (15) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

~~(17)~~ (16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

~~(18)~~ (17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

~~(19)~~ (18) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

~~(20)~~ (19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

~~(21)~~ (20) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

~~(22)~~ "Nutrient standards variance" means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.

~~(23)~~ (21) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of nutrient standards variances, and the implementation of those standards, and variances together with associated economic impacts.

~~(24)~~ (22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark, lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

~~(25)~~ (23) "Outstanding resource waters" means:

(a) state surface waters located wholly within the boundaries of areas designated as national parks or national wilderness areas as of October 1, 1995; or

(b) other surface waters or ground waters classified by the board under the provisions of 75-5-316 and approved by the legislature.

~~(26)~~ (24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a point source.

~~(27)~~ (25) "Parameter" means a physical, biological, or chemical property of state water when a value of that property affects the quality of the state water.

~~(28)~~ (26) "Person" means the state, a political subdivision of the state, institution, firm, corporation, partnership, individual, or other entity and includes persons resident in Canada.

~~(29)~~ (27) "Point source" means a discernible, confined, and discrete conveyance, including but not limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or other floating craft, from which pollutants are or may be discharged.

~~(30)~~ (28) (a) "Pollution" means:

(i) contamination or other alteration of the physical, chemical, or biological properties of state waters

1 that exceeds that permitted by Montana water quality standards, including but not limited to standards relating  
2 to change in temperature, taste, color, turbidity, or odor; or

3 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other  
4 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or  
5 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other  
6 wildlife.

7 (b) The term does not include:

8 (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge  
9 permit rules adopted by the board under this chapter;

10 (ii) activities conducted under this chapter that comply with the conditions imposed by the department  
11 in short-term authorizations pursuant to 75-5-308;

12 (iii) contamination of ground water within the boundaries of an underground mine using in situ coal  
13 gasification and operating in accordance with a permit issued under 82-4-221.

14 (c) Contamination referred to in subsection ~~(30)(b)(iii)~~ ~~(28)(b)(iii)~~ does not require a mixing zone.

15 ~~(31)~~ (29) "Sewage" means water-carried waste products from residences, public buildings, institutions,  
16 or other buildings, including discharge from human beings or animals, together with ground water infiltration  
17 and surface water present.

18 ~~(32)~~ (30) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or  
19 other wastes to an ultimate disposal point.

20 ~~(33)~~ (31) "Standard of performance" means a standard adopted by the board for the control of the  
21 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of  
22 the best available demonstrated control technology, processes, operating methods, or other alternatives,  
23 including, when practicable, a standard permitting no discharge of pollutants.

24 ~~(34)~~ (32) (a) "State waters" means a body of water, irrigation system, or drainage system, either  
25 surface or underground.

26 (b) The term does not apply to:

27 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

28 (ii) irrigation waters or land application disposal waters when the waters are used up within the

1 irrigation or land application disposal system and the waters are not returned to state waters.

2 ~~(35)~~ (33) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in  
3 combination with narrative information, that supports a finding as to whether a water body is achieving  
4 compliance with applicable water quality standards.

5 ~~(36)~~ (34) "Threatened water body" means a water body or stream segment for which sufficient credible  
6 data and calculated increases in loads show that the water body or stream segment is fully supporting its  
7 designated uses but threatened for a particular designated use because of:

8 (a) proposed sources that are not subject to pollution prevention or control actions required by a  
9 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

10 (b) documented adverse pollution trends.

11 ~~(37)~~ (35) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations  
12 for point sources and load allocations for both nonpoint sources and natural background sources established at  
13 a level necessary to achieve compliance with applicable surface water quality standards.

14 ~~(38)~~ (36) "Treatment works" means works, including sewage lagoons, installed for treating or holding  
15 sewage, industrial wastes, or other wastes.

16 ~~(39)~~ (37) "Waste load allocation" means the portion of a receiving water's loading capacity that is  
17 allocated to one of its existing or future point sources.

18 ~~(40)~~ (38) "Water quality protection practices" means those activities, prohibitions, maintenance  
19 procedures, or other management practices applied to point and nonpoint sources designed to protect,  
20 maintain, and improve the quality of state waters. Water quality protection practices include but are not limited  
21 to treatment requirements, standards of performance, effluent standards, and operating procedures and  
22 practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

23 ~~(41)~~ (39) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or  
24 otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

25 ~~(42)~~ (40) "Watershed advisory group" means a group of individuals who wish to participate in an  
26 advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the  
27 development of TMDLs under 75-5-703, including those groups or individuals requested by the department to  
28 participate in an advisory capacity as provided in 75-5-704.

**75-5-103. (Effective on occurrence of contingency) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

~~(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface water that are adopted to protect the designated uses of a surface water body.~~

~~(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.~~

~~(3) (2)~~ "Board" means the board of environmental review provided for in 2-15-3502.

~~(4) (3)~~ "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(5) (4)~~ "Council" means the water pollution control advisory council provided for in 2-15-2107.

~~(6) (5)~~ (a) "Currently available data" means data that is readily available to the department at the time a decision is made, including information supporting its previous lists of water bodies that are threatened or impaired.

(b) The term does not mean new data to be obtained as a result of department efforts.

~~(7) (6)~~ "Degradation" means a change in water quality that lowers the quality of high-quality waters for a parameter. The term does not include those changes in water quality determined to be nonsignificant pursuant to 75-5-301(5)(c).

~~(8) (7)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

~~(9)~~ (8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and includes sewage systems and treatment works.

~~(10)~~ (9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of chemical, physical, biological, and other constituents that are discharged into state waters.

~~(11)~~ (10) (a) "Energy development project" means each plant, unit, or other development and associated developments, including any associated supporting infrastructure, designed for or capable of:

(i) generating electricity;

(ii) producing gas derived from coal;

(iii) producing liquid hydrocarbon products;

(iv) refining crude oil or natural gas;

(v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax incentive pursuant to Title 15, chapter 70, part 5;

(vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant to 15-32-701; or

(vii) transmitting electricity through an electric transmission line with a design capacity of equal to or greater than 50 kilovolts.

(b) The term does not include a nuclear facility as defined in 75-20-1202.

~~(12)~~ (11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971, whether or not those uses are included in the water quality standards.

~~(13)~~ (12) "High-quality waters" means all state waters, except:

(a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by the board's classification rules; and

(b) surface waters that:

(i) are not capable of supporting any one of the designated uses for their classification; or

(ii) have zero flow or surface expression for more than 270 days during most years.

~~(14)~~ (13) "Impaired water body" means a water body or stream segment for which sufficient credible data shows that the water body or stream segment is failing to achieve compliance with applicable water quality standards.

(15) (14) "Industrial waste" means a waste substance from the process of business or industry or from the development of any natural resource, together with any sewage that may be present.

(16) (15) "Interested person" means a person who has a real property interest, a water right, or an economic interest that is or may be directly and adversely affected by the department's preliminary decision regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested authorization to degrade high-quality waters.

(17) (16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future nonpoint sources or to natural background sources.

(18) (17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the maximum change that can occur from the best practicable condition in a surface water without causing a violation of the surface water quality standards.

(19) (18) "Local department of health" means the staff, including health officers, employed by a county, city, city-county, or district board of health.

(20) (19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium, barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver, thallium, and zinc.

(21) (20) "Mixing zone" means an area established in a permit or final decision on nondegradation issued by the department where water quality standards may be exceeded, subject to conditions that are imposed by the department and that are consistent with the rules adopted by the board.

~~(22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a determination that base numeric nutrient standards cannot be achieved because of economic impacts or because of the limits of technology. The term includes individual, general, and alternative nutrient standards variances in accordance with 75-5-313.~~

~~(23) (21) "Nutrient work group" means an advisory work group, convened by the department, representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and other interested parties that will advise the department on the base numeric nutrient standards, the development of nutrient standards variances, and the implementation of those standards, and variances~~



1 ~~together with~~ associated economic impacts.

2 ~~(24)~~ (22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,  
3 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or  
4 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

5 ~~(25)~~ (23) "Outstanding resource waters" means:

6 (a) state surface waters located wholly within the boundaries of areas designated as national parks or  
7 national wilderness areas as of October 1, 1995; or

8 (b) other surface waters or ground waters classified by the board under the provisions of 75-5-316  
9 and approved by the legislature.

10 ~~(26)~~ (24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a  
11 point source.

12 ~~(27)~~ (25) "Parameter" means a physical, biological, or chemical property of state water when a value of  
13 that property affects the quality of the state water.

14 ~~(28)~~ (26) "Person" means the state, a political subdivision of the state, institution, firm, corporation,  
15 partnership, individual, or other entity and includes persons resident in Canada.

16 ~~(29)~~ (27) "Point source" means a discernible, confined, and discrete conveyance, including but not  
17 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or  
18 other floating craft, from which pollutants are or may be discharged.

19 ~~(30)~~ (28) (a) "Pollution" means:

20 (i) contamination or other alteration of the physical, chemical, or biological properties of state waters  
21 that exceeds that permitted by Montana water quality standards, including but not limited to standards relating  
22 to change in temperature, taste, color, turbidity, or odor; or

23 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other  
24 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or  
25 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other  
26 wildlife.

27 (b) The term does not include:

28 (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge

1 permit rules adopted by the board under this chapter;

2 (ii) activities conducted under this chapter that comply with the conditions imposed by the department  
3 in short-term authorizations pursuant to 75-5-308;

4 (iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in  
5 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter  
6 11, part 1;

7 (iv) contamination of ground water within the boundaries of an underground mine using in situ coal  
8 gasification and operating in accordance with a permit issued under 82-4-221;

9 (c) Contamination referred to in subsections ~~(30)(b)(iii) and (30)(b)(iv)~~ (28)(b)(iii) and (28)(b)(iv) does  
10 not require a mixing zone.

11 ~~(31)~~ (29) "Sewage" means water-carried waste products from residences, public buildings, institutions,  
12 or other buildings, including discharge from human beings or animals, together with ground water infiltration  
13 and surface water present.

14 ~~(32)~~ (30) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or  
15 other wastes to an ultimate disposal point.

16 ~~(33)~~ (31) "Standard of performance" means a standard adopted by the board for the control of the  
17 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of  
18 the best available demonstrated control technology, processes, operating methods, or other alternatives,  
19 including, when practicable, a standard permitting no discharge of pollutants.

20 ~~(34)~~ (32) (a) "State waters" means a body of water, irrigation system, or drainage system, either  
21 surface or underground.

22 (b) The term does not apply to:

23 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

24 (ii) irrigation waters or land application disposal waters when the waters are used up within the  
25 irrigation or land application disposal system and the waters are not returned to state waters.

26 ~~(35)~~ (33) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in  
27 combination with narrative information, that supports a finding as to whether a water body is achieving  
28 compliance with applicable water quality standards.

~~(36)~~ (34) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

- (a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or
- (b) documented adverse pollution trends.

~~(37)~~ (35) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

~~(38)~~ (36) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(39)~~ (37) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

~~(40)~~ (38) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(41)~~ (39) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

~~(42)~~ (40) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704."

**Section 6.** Section 75-5-105, MCA, is amended to read:

**"75-5-105. Confidentiality of records.** Except as provided in 80-15-108, any information concerning sources of pollution that is furnished to the board or department or that is obtained by either of them is a matter

1 of public record and open to public use. However, any information unique to the owner or operator of a source  
2 of pollution that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be  
3 maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file  
4 a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the  
5 information to remain confidential. The department must be served in the action and may intervene as a party.  
6 Any information not intended to be public when submitted to the board or department must be submitted in  
7 writing and clearly marked as confidential. ~~Except as provided in 75-5-314, the~~ The data describing physical  
8 and chemical characteristics of a waste discharged to state waters may not be considered confidential. The  
9 board may use any information in compiling or publishing analyses or summaries relating to water pollution if  
10 the analyses or summaries do not identify any owner or operator of a source of pollution or reveal any  
11 information that is otherwise made confidential by this section."

12  
13 **Section 7.** Section 75-5-301, MCA, is amended to read:

14 ~~"75-5-301. Classification and standards for state waters.~~ Consistent with the provisions of 80-15-  
15 201 and this chapter, the board shall:

16 (1) ~~establish the classification of all state waters in accordance with their present and future most~~  
17 ~~beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an~~  
18 ~~aquatic ecosystem that includes salmonid or nonsalmonid fish;~~

19 (2) ~~formulate and adopt standards of water quality, giving consideration to the economics of waste~~  
20 ~~treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the~~  
21 ~~requirements of 75-5-312. Standards adopted by the board must meet the following requirements:~~

22 (a) ~~for carcinogens, the water quality standard for protection of human health must be the value~~  
23 ~~associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed  $1 \times$~~   
24  ~~$10^{-3}$  in the case of arsenic and  $1 \times 10^{-5}$  for other carcinogens. However, if a standard established at a risk level~~  
25 ~~of  $1 \times 10^{-3}$  for arsenic or  $1 \times 10^{-5}$  for other carcinogens violates the maximum contaminant level obtained from~~  
26 ~~40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.~~

27 (b) ~~standards for the protection of aquatic life do not apply to ground water.~~

28 (c) ~~nutrient water quality standards, whether numeric or narrative, apply only;~~

~~(i) to streams, except for ephemeral streams, with algae levels greater than a monthly average of 150 milligrams of chlorophyll-a per square meter based on field values, or a calibrated water quality model if field values are unavailable; and~~

~~(ii) between July 1 and September 30 of each calendar year.~~

~~(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this chapter, revise established classifications of waters and adopted standards of water quality;~~

~~(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the department be specifically identified and requiring that mixing zones have:~~

~~(a) the smallest practicable size;~~

~~(b) a minimum practicable effect on water uses; and~~

~~(c) definable boundaries;~~

~~(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not limited to rules that:~~

~~(a) provide a procedure for department review and authorization of degradation;~~

~~(b) establish criteria for the following:~~

~~(i) determining important economic or social development; and~~

~~(ii) weighing the social and economic importance to the public of allowing the proposed project against the cost to society associated with a loss of water quality;~~

~~(c) establish criteria for determining whether a proposed activity or class of activities, in addition to those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in order that those activities are not required to undergo review under 75-5-303 (3). These criteria must be established in a manner that generally:~~

~~(i) equates significance with the potential for harm to human health, a beneficial use, or the environment;~~

~~(ii) considers both the quantity and the strength of the pollutant;~~

~~(iii) considers the length of time the degradation will occur;~~

~~(iv) considers the character of the pollutant so that greater significance is associated with carcinogens and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less~~

1    ~~harmful or less persistent.~~

2            ~~(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will~~  
3    ~~not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of~~  
4    ~~the ground water mixing zone does not exceed:~~

5            ~~(i) 7.5 milligrams per liter from sources other than sewage;~~

6            ~~(ii) 5.0 milligrams per liter from sewage discharged from a system that does not use level two~~  
7    ~~treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less;~~

8            ~~(iii) 7.5 milligrams per liter from sewage discharged from a system using level two treatment, which~~  
9    ~~must be defined in the rules; or~~

10           ~~(iv) 7.5 milligrams per liter from sewage discharged from a system in areas where the ground water~~  
11    ~~nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.~~

12           ~~(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective~~  
13    ~~and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute~~  
14    ~~guidelines for granting or denying applications for authorization to degrade high quality waters under the policy~~  
15    ~~established in 75-5-303 (2) and (3).~~

16           ~~(7) adopt rules to implement this section."~~

17

18           **Section 7.** Section 75-5-317, MCA, is amended to read:

19           **"75-5-317. Nonsignificant activities.** (1) The categories or classes of activities identified in  
20    subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to  
21    human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

22           (2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

23           (a) existing activities that are nonpoint sources of pollution as of April 29, 1993;

24           (b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable  
25    land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully  
26    protected;

27           (c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water  
28    management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental

1 protection agency-approved label and when existing and anticipated uses will be fully protected;

2 (d) changes in existing water quality resulting from an emergency or remedial activity that is designed  
3 to protect public health or the environment and is approved, authorized, or required by the department;

4 (e) changes in existing ground water quality resulting from treatment of a public water supply system,  
5 as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar  
6 means that is designed to protect the public health or the environment and that is approved, authorized, or  
7 required by the department;

8 (f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well  
9 or monitoring well drilling, development, or abandonment, if used according to department-approved water  
10 quality protection practices and if no discharge to surface water will occur;

11 (g) short-term changes in existing water quality resulting from activities authorized by the department  
12 pursuant to 75-5-308;

13 (h) land application of animal waste, domestic septage, or waste from public sewage treatment  
14 systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates  
15 are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

16 (i) use of gray water, as defined in 75-5-325, from nonpublic gray water reuse systems for irrigation  
17 during the growing season in accordance with gray water reuse rules adopted pursuant to 75-5-305;

18 (j) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a  
19 public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and  
20 constructed in accordance with Title 75, chapter 6;

21 (k) discharges of water to ground water from water well or monitoring well tests, hydrostatic pressure  
22 and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs,  
23 conducted in accordance with department-approved water quality protection practices;

24 (l) oil and gas drilling, production, abandonment, plugging, and restoration activities that do not result  
25 in discharges to surface water and that are performed in accordance with Title 82, chapter 10, or Title 82,  
26 chapter 11;

27 (m) short-term changes in existing water quality resulting from ordinary and everyday activities of  
28 humans or domesticated animals, including but not limited to:

- (i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;
- (ii) fording of streams or other bodies of water by vehicular or other means; and
- (iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;
- (n) coal and uranium prospecting that does not result in a discharge to surface water, that does not involve a test pit located in surface water or that may affect surface water, and that is performed in accordance with Title 82, chapter 4;
- (o) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;
- (p) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;
- (q) metallic and nonmetallic mineral exploration that does not result in a discharge to surface water and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;
- (r) stream-related construction projects or stream enhancement projects that result in temporary changes to water quality but do not result in long-term detrimental effects and that have been authorized pursuant to 75-5-318;
- (s) diversions or withdrawals of water established and recognized under Title 85, chapter 2;
- (t) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that are related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short term; and
- (U) DISCHARGES OF TOTAL PHOSPHORUS OR TOTAL NITROGEN THAT DO NOT:
- (I) CREATE CONDITIONS THAT ARE TOXIC OR HARMFUL TO HUMAN, ANIMAL, PLANT, AND AQUATIC LIFE;
- (II) CREATE CONDITIONS THAT PRODUCE UNDESIRABLE AQUATIC LIFE; OR
- (III) CAUSE MEASURABLE CHANGES IN AQUATIC LIFE; AND
- ~~(u)(v) discharges that, after full mixing with the minimum 14-day average streamflow that occurs once every 5 years, result in algae levels less than or equal to a monthly average of 150 milligrams of chlorophyll-a~~



~~per square meter during the time period from July 1 through September 30 any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c); and~~

~~(u) (v) — any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301 (5)(c)."~~

**Section 8.** Section 75-5-320, MCA, is amended to read:

**"75-5-320. Temporary water quality standards variances.** (1) Except as provided in 75-5-222(2) and ~~75-5-313~~, the department may adopt rules providing criteria and procedures for the department to issue a temporary variance to water quality standards if:

- (a) a variance will not result in a lowering of currently attained, ambient water quality;
- (b) the department rules are consistent, as necessary, with federal rules that authorize states to adopt variances from standards, including but not limited to 40 CFR 131.14; and
- (c) (i) a permittee cannot reasonably expect to meet a water quality standard during the permit term for which the variance is approved; and
- (ii) a permit compliance schedule is not feasible to preclude the need for a variance during the permit term for which the variance is approved.

(2) In order to receive a temporary variance, a permittee shall evaluate facility operations and infrastructure to maximize pollutant reduction through an optimization study. The variance must require the implementation of optimization study actions as terms and conditions of the discharge permit.

(3) The department shall review a temporary variance issued pursuant to this section at least once every 5 years and may continue, modify, or terminate the temporary variance as a result of the review."

**NEW SECTION. Section 9. Repealer.** The following sections of the Montana Code Annotated are repealed:

- 75-5-313. Nutrient standards variances -- individual, general, and alternative.
- 75-5-314. Confidentiality of base numeric standards and nutrient standards variances.
- 75-5-319. Compliance schedule for base numeric nutrient standards.

1

2 NEW SECTION. SECTION 10. REPEALER. ARM 17.30.660 IS REPEALED.

3

4 NEW SECTION. Section 11. Codification instruction. [Sections 1 and 2] are intended to be codified  
5 as an integral part of Title 75, chapter 5, and the provisions of Title 75, chapter 5, apply to [sections 1 and 2].

6

7 NEW SECTION. SECTION 12. SAVING CLAUSE. [THIS ACT] DOES NOT AFFECT NUTRIENT STANDARDS  
8 VARIANCES GRANTED BEFORE [THE EFFECTIVE DATE OF THIS ACT], OR RIGHTS AND DUTIES THAT MATURED, PENALTIES  
9 THAT WERE INCURRED, OR PROCEEDINGS THAT WERE BEGUN BEFORE [THE EFFECTIVE DATE OF THIS ACT].

10

11 NEW SECTION. SECTION 13. EFFECTIVE DATE. [THIS ACT] IS EFFECTIVE ON PASSAGE AND APPROVAL.

12

- END -

## **MINUTES**

### **MONTANA SENATE 67th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** Chair Jeffrey W. Welborn, on February 24, 2021 at 2:45 PM, in Room 303 Capitol

#### **ROLL CALL**

**Members Present in the Committee Room:**

Sen. Jeffrey W. Welborn, Chair (R)  
Sen. Jason D. Small, Vice Chair (R)  
Sen. Duane Ankney (R)  
Sen. Bob Brown (R)  
Sen. Jill Cohenour (D)  
Sen. Bruce Gillespie (R)  
Sen. Brian Hoven (R)  
Sen. Tom Jacobson (D)  
Sen. Mike Lang (R)  
Sen. Ryan Lynch (D)

**Members Present by Zoom Video Conference:**

Sen. Pat Flowers, Vice Chair (D)  
Sen. JP Pomnichowski (D)

**Members Excused:** None

**Members Absent:** None

**Staff Present:** Lauren de Paepe, Committee Secretary  
Jason Mohr, Legislative Branch  
Jacquie Simmons, Remote Meeting Coordinator

**Audio Committees:** These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

**Committee Business Summary:**

Hearing & Date Posted: SB 284, 2/22/2021; SB 302, 2/19/2021; SB 348, 2/23/2021;  
SB 352, 2/23/2021; SB 358, 2/23/2021  
Executive Action: SB 304 - Be Tabled; SB 371 - Be Tabled; SB 233 - Do Pass as  
Amended; SB 302 - Do Pass; SB 348 - Do Pass; SB 284 - Do  
Pass; SB 258 - Be Tabled

14:48:06 Sen. Lang entered the meeting.

**EXECUTIVE ACTION ON SB 304**

14:48:52 **Motion/Vote:** Sen. Lang moved that **SB 304 BE TABLED**. Motion carried 11-0 by voice vote. Sen. Lynch was excused.

**EXHIBIT**(nas39a01)

**EXECUTIVE ACTION ON SB 371**

14:49:37 **Motion/Vote:** Sen. Small moved that **SB 371 BE TABLED**. Motion carried 11-0 by voice vote. Sen. Lynch was excused.

**EXHIBIT**(nas39a02)

**EXECUTIVE ACTION ON SB 233**

14:50:25 **Motion:** Sen. Ankney moved that **SB 233 DO PASS**.

14:50:48 **Motion:** Sen. Ankney moved that **SB 233 BE AMENDED**.

**EXHIBIT**(nas39a03)

**Discussion:**

14:51:39 Chair Welborn

14:51:59 Sen. Ankney

14:52:19 **Vote:** Motion carried 11-0 by voice vote. Sen. Lynch was excused.

14:52:37 **Motion:** Sen. Ankney moved that **SB 233 DO PASS AS AMENDED**.

**Discussion:**

14:52:48 Sen. Ankney

14:53:46 Sen. Cohenour

14:54:06 Jason Mohr, Legislative Services Division (LSD)

14:55:02 **Vote:** Motion carried unanimously by roll call vote. Sen. Lynch voted by proxy.

**Committee Business:**

14:55:52 Chair Welborn

14:57:16 Mr. Mohr, LSD

14:57:27 Chair Welborn

14:57:53 Sen. Lynch entered the meeting.

14:57:58 Sen. Flowers

**HEARING ON SB 352**

**Opening Statement by Sponsor:**

14:59:47 Sen. John Esp (R), SD 30, opened the hearing on SB352, Clarify objections to water rights.

**EXHIBIT(nas39a04)**

**Proponents' Testimony:**

15:01:32 Alan Redfield, citizen  
 15:02:46 Holly Franz, Senior Water Rights Coalition  
 15:04:02 Rachel Cone, Montana Farm Bureau Federation  
 15:04:24 Mike Murphy, Montana Water Resources Association  
 15:04:55 Raylee Honeycutt, Montana Stockgrowers Association

**Opponents' Testimony:**

15:05:52 Andrew Gorder, Clark Fork Coalition  
 15:10:12 Clayton Elliott, Montana Trout Unlimited

**Informational Testimony:**

15:13:37 Millie Heffner, Water Rights Bureau chief, Department of Natural Resources and Conservation (DNRC)  
 15:14:00 Anna Pakenham Stevenson, Water Resources Division administrator, DNRC

**Questions from Committee Members and Responses:**

15:14:30 Sen. Gillespie  
 15:16:57 Ms. Heffner, DNRC  
 15:17:29 Sen. Brown  
 15:18:18 Mr. Redfield, citizen  
 15:18:31 Sen. Flowers  
 15:18:57 Sen. Esp

**Closing by Sponsor:**

15:19:14 Sen. Esp

**HEARING ON SB 358**

**Opening Statement by Sponsor:**

15:19:58 Sen. John Esp (R), SD 30, opened the hearing on SB358, Repeal numeric nutrient standards for water quality.

**Proponents' Testimony:**

15:22:26 Tammy Johnson, Montana Mining Association

**EXHIBIT(nas39a05)**

15:28:04 Heather McDowell, vice president of legal, environmental and government affairs, Sibanye-Stillwater Montana  
 15:30:40 Chair Welborn gave the duties of the chair to Sen. Ankney.  
 15:33:43 Dan Rostad, Boulder River Watershed Association

15:36:15 Dave Galt, Montana Petroleum Association  
 15:37:41 Peggy Trenk, Treasure State Resources Association  
 15:39:37 Tim Burton, executive director, Montana League of Cities and Towns

**Opponents' Testimony:**

15:41:39 Clayton Elliott, Montana Trout Unlimited  
 15:42:57 Dr. Jon Kenning, Department of Environmental Quality (DEQ)  
 15:47:42 Betsy Baxter, Big Timber  
 15:49:46 Sarah Zuzulock, principal consulting engineer, Zuzulock Environmental Services  
 15:57:01 Andrew Gorder, Clark Fork Coalition  
 16:00:38 Jerry Iverson, Big Timber; East Boulder Mine oversight committee; Cottonwood Resource Council  
 16:03:12 Paul Hawks, rancher, Sweetgrass County; Good Neighbor Agreement oversight committee

16:05:14 Sen. Ankney gave the duties of the chair to Vice Chair Small.

**Informational Testimony:**

16:05:38 Dr. Michael Suplee, Water Quality Planning Bureau, DEQ

**Questions from Committee Members and Responses:**

16:06:26 Sen. Cohenour  
 16:11:47 Mr. Suplee, DEQ  
  
 16:11:56 Sen. Lynch left the meeting.  
  
 16:12:30 Sen. Flowers  
 16:15:00 Mr. Kenning, DEQ

**Closing by Sponsor:**

16:16:01 Sen. Esp

**HEARING ON SB 284**

**Opening Statement by Sponsor:**

16:18:59 Sen. Russel (Russ) Tempel (R), SD 14, opened the hearing on SB284, Generally revise county gravel pit permitting.

[EXHIBIT\(nas39a06\)](#)

[EXHIBIT\(nas39a07\)](#)

**Proponents' Testimony:**

16:23:06 Eric Bryson, Montana Association of Counties (MACo)  
 16:24:53 Shane Gorder, Richland County commissioner; former president, MACo  
 16:26:34 Todd Devlin, Prairie County commissioner; former president, MACo  
 16:27:31 Larry Hendrickson, Liberty County commissioner  
 16:28:34 John Ostlund, Yellowstone County commissioner; former president, MACo  
 16:31:11 Shelby DeMars, Montana Association of Oil, Gas, & Coal Counties  
 16:32:15 Abigail St. Lawrence, Montana Building Industry Association  
 16:33:23 Bob Gilbert, Phillips County; Musselshell County

**Opponents' Testimony:**

16:34:20 Glenn Marx, executive director, Montana Association of Land Trusts  
16:39:33 Dave Galt, Montana Contractors' Association  
16:41:49 Whitner Chase, Montana Conservation Voters  
16:42:55 Ed Coleman, Coal and Open Cut Mining Bureau chief, Department of  
Environmental Quality (DEQ)

**EXHIBIT(nas39a08)**

16:45:28 Mike Newton, Fisher Sand & Gravel Company  
16:48:27 Amy Seaman, Montana Audubon

**EXHIBIT(nas39a09)**

**Informational Testimony:**

16:53:12 Chris Cronin, supervisor, Opencut Mining Section, DEQ

**Questions from Committee Members and Responses:**

16:53:32 Sen. Pomnichowski  
16:55:01 Mr. Cronin, DEQ  
16:55:16 Sen. Pomnichowski  
16:55:56 Sen. Tempel  
16:56:27 Sen. Pomnichowski  
16:57:23 Mr. Bryson, MACo  
16:58:47 Sen. Pomnichowski  
16:59:06 Mr. Cronin  
17:00:26 Sen. Lang  
17:01:05 Ms. Seaman, Montana Audubon  
17:01:44 Sen. Lang  
17:05:56 Mr. Cronin  
17:06:07 Sen. Flowers  
17:07:56 Mr. Cronin  
17:08:10 Sen. Flowers  
17:08:26 Sen. Lang  
17:08:54 Sen. Tempel

**Closing by Sponsor:**

17:09:45 Sen. Tempel

17:11:00 Sen. Lang left the meeting.

**HEARING ON SB 302**

**Opening Statement by Sponsor:**

17:12:11 Sen. Walt Sales (R), SD 35, opened the hearing on SB302, Extend authorization  
deadline for use of navigable riverbed.

**Proponents' Testimony:**

17:13:25 Krista Lee Evans, Senior Water Rights Coalition; Association of Gallatin  
Agricultural Irrigators  
17:14:26 Mike Murphy, Montana Water Resources Association  
17:15:23 Raylee Honeycutt, Montana Stockgrowers Association

17:15:43 Rachel Cone, Montana Farm Bureau Federation  
17:16:09 Clayton Elliott, Montana Trout Unlimited

**Opponents' Testimony:** None

**Informational Testimony:**

17:17:02 Shawn Thomas, Trust Land Management Division administrator, Department of  
Natural Resource and Conservation (DNRC)  
17:17:36 Brian Bramblett, attorney, DNRC

**Questions from Committee Members and Responses:** None

**Closing by Sponsor:**

17:18:09 Sen. Sales

**HEARING ON SB 348**

**Opening Statement by Sponsor:**

17:18:25 Sen. Walt Sales (R), SD 35, opened the hearing on SB348, Revise laws for use  
of reclaimed wastewater for snowmaking.

**Proponents' Testimony:**

17:21:37 Rich Chandler, Lone Mountain Land Company, Big Sky

[EXHIBIT\(nas39a10\)](#)

[EXHIBIT\(nas39a11\)](#)

17:24:09 Krista Lee Evans, Association of Gallatin Agricultural Irrigators  
17:25:04 Clayton Elliott, Montana Trout Unlimited

**Opponents' Testimony:** None

**Informational Testimony:**

17:26:23 Kevin Smith, Water Quality Division, Department of Environmental Quality  
17:26:44 Millie Heffner, Water Rights Bureau chief, Department of Natural Resources and  
Conservation (DNRC)  
17:27:09 Laura Rennick, operations manager, Water Resources Division, DNRC

**Questions from Committee Members and Responses:**

17:27:29 Sen. Gillespie  
17:28:09 Mr. Chandler, Lone Mountain Land Company

**Closing by Sponsor:**

17:28:49 Sen. Sales

17:29:40 Chair Small gave the duties of the chair to Sen. Welborn.

**EXECUTIVE ACTION ON SB 302**

17:30:06 **Motion/Vote:** Sen. Small moved that **SB 302 DO PASS**. Motion carried 11-0 by  
voice vote. Sen. Lynch voted by proxy. Sen. Lang was excused.



**EXECUTIVE ACTION ON SB 348**

17:30:54 **Motion:** Sen. Small moved that **SB 348 DO PASS.**

**Discussion:**

17:31:22 Sen. Pomnichowski

17:31:52 Sen. Hoven

17:32:12 Sen. Small

17:32:23 Sen. Sales

17:32:55 Sen. Brown

17:33:15 **Vote:** Motion carried 11-0 by voice vote. Sen. Lynch voted by proxy. Sen. Lang was excused.

**Committee Business:**

17:33:49 Sen. Welborn

17:34:33 Jason Mohr, Legislative Services Division (LSD)

17:35:48 Chair Welborn

17:36:08 Sen. Flowers

17:36:23 Sen. Lynch entered the meeting.

17:36:35 Mr. Mohr, LSD

17:36:58 Sen. Ankney left the meeting.

17:37:18 Sen. Small left the meeting.

17:38:06 Sen. Flowers

**EXECUTIVE ACTION ON SB 284**

17:39:49 **Motion:** Sen. Jacobson moved that **SB 284 DO PASS.**

**Discussion:**

17:40:27 Sen. Jacobson

17:41:02 **Vote:** Motion carried 7-5 by roll call vote with Sen. Cohenour, Sen. Flowers, Sen. Jacobson, Sen. Lynch and Sen. Pomnichowski voting no. Sen. Ankney, Sen. Lang and Sen. Small voted by proxy.

**EXECUTIVE ACTION ON SB 358**

17:42:03 **Motion:** Sen. Brown moved that **SB 358 DO PASS.**

**Discussion:**

17:42:23 Sen. Cohenour

17:42:58      **Substitute Motion/Vote:** Sen. Cohenour made a substitute motion that **SB 358 BE TABLED**. Substitute motion carried 7-5 by roll call vote with Sen. Ankney, Sen. Brown, Sen. Gillespie, Sen. Lang and Sen. Small voting no. Sen. Ankney, Sen. Lang and Sen. Small voted by proxy.

**ADJOURNMENT**

Adjournment: 5:44 PM

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Lauren de Paepe, Secretary

Id

Additional Documents:

**EXHIBIT**([nas39aad.pdf](#))

## History of Montana Numeric Nutrient Standards Development

**1998** - The Montana Department of Environmental Quality (MDEQ) had long been concerned about controlling the undesirable effects on water quality caused by the release of excess nutrients (nitrogen and phosphorus) in state waters. According to a document prepared by the MDEQ, in the mid 1970s and into the 1980s, citizen complaints about excessive algae growth in the Clark Fork River led to a 1998 voluntary agreement among discharges to reduce nutrient loading to that river.

An Environmental Protection Agency (EPA) plan, initiated in 1998, encouraged states to adopt numeric nutrient standards for all of their surface waters.

**2000** - Narrative water quality standards were adopted for all state waters decades ago. Beginning in 2000, the MDEQ has worked actively to develop numeric nutrient standards for all state waters. Throughout the early 2000s, the MDEQ carried out a number of scientific studies and analyses.

**2005** – It became apparent to the MDEQ that the scientifically-derived nutrient concentrations being developed were going to be very low, particularly in some regions of the state. It also became apparent that some of the nutrient concentrations the MDEQ was considering were at or below the levels that can be readily achieved by practical wastewater technologies of today. The MDEQ began investigating options for implementing the standards in a more staged manner. The studies, and consultation with EPA, revealed that a temporary variance process with discharger specific permit limits for a defined period of time could work effectively for implementing the standards under consideration.

**2005-2008** – Consultation with MDEQ legal staff revealed that MDEQ did not have clear legal authority to allow the case-by-case, discharger-by-discharger variances it envisioned. During this time period, MDEQ envisioned a process for nutrient standards whereby the standards, once adopted, could remain the same along the stream so the public and stakeholders would clearly know what the standards are. However, individual dischargers could remain in compliance with their permits by applying for discharger-specific variances. The MDEQ also wanted to work with nonpoint source nutrient contributors while the technology and economics of meeting numeric limits caught up.

**2008** – MDEQ began working with an informal stakeholder group (Nutrient Criteria Affordability Advisory Group) to address many of the cost-related issues. This informal group developed a detailed affordability assessment process for POTWs based on EPA guidance.

**2009** – SB 95 was introduced to provide numeric nutrient standards for Montana's receiving waters and included a temporary nutrient standard process where nutrient criteria levels were not achievable. At the time, industrial dischargers were concerned that discharge permits would be difficult and likely impossible to comply with if numeric nutrient criteria were

codified. Various industry groups engaged in SB 95, including the MMA, and the final version required the formation of a nutrient advisory group to address numeric nutrient standards and complex variance process. SB 95 also allowed for nutrient trading. SB 95 final text is here: <http://legmt.gov/bills/2009/billhtml/SB0095.htm>.

The Nutrient Work Group (NWG) was formed and was comprised of members representing agriculture and livestock, conservation districts, environmental organizations, financing and state-level grant agencies, forestry, manufacturing, municipalities, oil and gas, railroads, real estate, wastewater engineering, and mining. The MMA is a member and participant in the NWG, has been since its inception.

It soon became apparent that the creation of a variance process would be difficult, if not impossible. One implementation hurdle was EPA guidance that dictated certain factors had to be met before a variance could be issued. The factor that fit industry was the requirement to prove that the standard would cause widespread economic harm, which is nearly an impossible threshold to meet.

**2011** –SB 367 was introduced in the legislature. The bill resulted directly from meetings between the MDEQ and the NWG held from 2009-2011.

SB 367 added several key provisions including that in addition to the individual variances established in SB 95, the MDEQ was directed to grant “general” variances with permit limits establish in statute. The general variance is divided into three categories based on discharge flow. These limits were to sunset on May 31, 2016 and the MDEQ was instructed to adopt rules before that date.

SB 367 directed the MDEQ, in consultation with the NWG, to develop new categorical variance numbers in rule for dischargers to surface waters. SB 367 established that immediate compliance with numeric nutrient standards would result in a substantial and widespread economic impact to the State of Montana. This is a critical component of SB 367 and of the variance process.

SB 367 directed MDEQ to revisit the variance process on a 3-year interval, and update the concentration levels of the general variance in conjunction with the triennial review; which is currently in progress (2016).

SB 367 indicated that permittees receiving a variance shall evaluate current facility operations to optimize nutrient reduction with existing infrastructure and shall analyze cost-effective methods of reducing nutrient loading, including but not limited to nutrient trading without substantial investment in new infrastructure and the legislation included a confidentiality clause protecting proprietary information. SB 367 final text is here: <http://leg.mt.gov/bills/2001/billpdf/SB0367.pdf>.

**2012** – The Board of Environmental Review adopted a nutrient trading policy.

**2013** – MDEQ developed numeric nutrient standards for total phosphorous and total nitrogen based on numerous studies conducted by DEQ staff, led by Mike Suplee, PhD earlier in the timeline. The variance process took more time to develop. Mr. Jeff Blend, PhD did an economic analysis to support the statement in SB 367 that meeting the criteria would cause significant and widespread economic harm. The MDEQ continued to meet with the NWG to focus on (1) how site-specific nutrient standards might be established for specific streams, where needed, (2) defining upfront the nutrient reduction steps that would occur under the auspices of the general variance, to provide regulatory certainty to MPDES permit holders, (3) sorting out which text would be adopted as rules to address nutrient discharges, and (5) finalizing language in the draft rules, including the details of a non-severability clause. The clause would vacate the numeric nutrient standards if a court declared that portion of the statute invalid or if the EPA disapproved of the rule package.

MDEQ made it clear that it intended to propose the rules for adoption in late 2013 or early 2014. At the NWG meeting in November of 2013, not every member of the group felt that all issues were completely resolved but others felt that their concerns were sufficiently addressed. The final draft rule package was provided to NWG members in December of 2013.

**2014** – The MDEQ requested initiation of rule adoption before the Board of Environmental Review (BER) in January. A public hearing was held in March. The MDEQ briefed the BER in May and said they would be back in July to request adoption of the rules.

The rules, in the form of two Circulars labeled 12A and 12B, were adopted by the BER in July. DEQ Circular 12A contains the numeric criteria and DEQ Circular 12B includes the general and individual variance process. You can find the Circulars here:

Circular 12A:

[https://deq.mt.gov/Portals/112/Water/WQPB/Standards/NutrientWorkGroup/PDFs/NutrientRules/CircularDEQ12A\\_July2014\\_FINAL.pdf](https://deq.mt.gov/Portals/112/Water/WQPB/Standards/NutrientWorkGroup/PDFs/NutrientRules/CircularDEQ12A_July2014_FINAL.pdf)

Circular 12B:

[https://deq.mt.gov/Portals/112/Water/WQPB/Standards/NutrientWorkGroup/PDFs/NutrientRules/CircularDEQ12B\\_July2014\\_FINAL.pdf](https://deq.mt.gov/Portals/112/Water/WQPB/Standards/NutrientWorkGroup/PDFs/NutrientRules/CircularDEQ12B_July2014_FINAL.pdf)

A Guidance Document was also developed along with the Circulars. The document provides guidance pertaining to the implementation of Montana's base numeric nutrient standards and variances from those standards. The final Guidance Document can be found here: [https://deq.mt.gov/Portals/112/Water/WQPB/Standards/NutrientWorkGroup/PDFs/NutrientRules/NutrientStandardGuidance\\_July2014.pdf](https://deq.mt.gov/Portals/112/Water/WQPB/Standards/NutrientWorkGroup/PDFs/NutrientRules/NutrientStandardGuidance_July2014.pdf)

During the adoption of Circulars 12A and 12B, contingency language was also promulgated. The language is contained in 17.30.619(2) found here: <http://www.mtrules.org/gateway/ruleno.asp?RN=17%2E30%2E619>

**2015** – HB 270 was introduced and passed. HB 270 states that: If the United States Environmental Protection Agency vetoes or objects to a discharge permit because of a nutrient standards variance provided for in 75-5-313 and the environmental protection agency determines that no variance may be granted for the permits, the department shall modify the discharge permit to contain nutrient limits based on the base numeric nutrient standards and a compliance schedule for meeting these nutrient limits. The compliance schedule may not extend for more than 20 years. The department may review and modify the compliance schedule every 3 years. You can find the final text of HB 270 here: <http://leg.mt.gov/bills/2015/billpdf/HB0270.pdf>

**2016** – The US EPA completed its review of Montana's new and revised water quality standards for nutrients and approved the same.

A lawsuit was filed on May 31, 2016 in US District Court in Great Falls. Upper Missouri Waterkeeper –v- United States EPA requests the following relief:

1. A declaration that EPA acted in violation of the Clean Water Act and applicable regulation in approving Montana's variance water quality standard for nutrients;
2. A declaration that EPA's approval of Montana's variance water quality standard for nutrients is arbitrary and capricious and an abuse of discretion;
3. Vacatur of EPA's approval of that portion of Montana's water quality standards that is the variance water quality standard for nutrients found in DEQ Circular 12B;
4. An award of Upper Missouri Waterkeeper's costs and attorneys' fees as determined appropriate under the Equal Access to Justice Act; and
5. Such other and further relief as the Court deems just and equitable.

**2017** – After the 3-year triennial review process, DEQ adopts and EPA approves revisions to the variance rules in June 2017. The parties submit amended briefs and motions for summary judgment to the Court.

**2019** – On March 25, 2019, the District Court issued a decision upholding most of Montana's variance to its adopted numeric nutrient criteria. The Court recognized the EPA's variance regulations allow for consideration of economic and social impacts and that this variance process is authorized under the Clean Water Act. However, the Court faulted the timeline for

meeting the numeric nutrient criteria under the Montana variance, holding that the Clean Water Act and implementing regulations require parties to start the variance period meeting the “highest attainable standard” and meet the base numeric standards by the end of the variance period. The Court also holds that the 20-year period adopted by DEQ is too long. The Court asks the parties to confer and submit a proposed timeline to the Court.

The parties failed to agree on a proposed timeline and submitted separate briefs proposing an appropriate timeline. The plaintiffs submit a report written by an individual not licensed to practice professional engineering in Montana and without any Montana data points for completing wastewater projects in Montana. Nevertheless, the Court relies on this extra-record evidence to issue a order requiring DEQ to amend its variance timeframe to require compliance with the base numeric standards “in the range proposed by Plaintiffs.”

In the fall of 2019, DEQ proposed amended rules to comply with the District Court order. All parties submit objections to the proposed rules during the rulemaking process. DEQ adopts the proposed rules in November 2019. Concurrently, the National Association of Clean Water Agencies, the Montana League of Cities and Towns, and the Treasure State Resources Association appeal the District Court order.

**2020** – In February, the EPA rejects the DEQ proposed amended rules, triggering the self-executing non-severability clause of the Montana variance. This reverts Montana to narrative nutrient criteria.

In March, the Upper Missouri Waterkeepers files suit against the EPA’s action in federal district court (“Waterkeepers II”), challenging the ability of the EPA to approve the state’s non-severability clause. In May and June, the Montana League of Cities and Towns and the Treasure State Resources Association move to intervene in the case.

In June, the plaintiffs move for summary judgment in Waterkeepers II. Concurrently, the National Association of Clean Water Agencies, the Montana League of Cities and Towns, and the Treasure State Resources Association file their opening briefs in the Ninth Circuit appeal of Waterkeepers I decision.





## **2021 Session**

### **Additional Documents**

**May include the following:**

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**
  - Petitions, Pamphlets, Leaflets, Brochures, Emails, all documents given to Committee Secretary 24 hours after the meeting adjourned.**

**The original exhibit/items are on file at the Montana Historical Society and may be viewed there.**

**BUSINESS REPORT**  
**MONTANA SENATE**  
**67th LEGISLATURE - REGULAR SESSION**  
**SENATE NATURAL RESOURCES COMMITTEE**

**Date:** Wednesday, February 24, 2021  
**Place:** Capitol

**Time:** 2:45 PM  
**Room:** 303

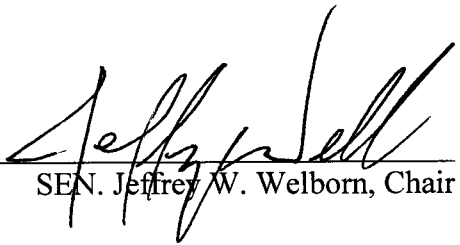
**BILLS and RESOLUTIONS HEARD:**

SB 284 - Generally revise county gravel pit permitting - Sen. Russel (Russ) Tempel (R)  
SB 302 - Extend authorization deadline for use of navigable riverbed - Sen. Walt Sales (R)  
SB 348 - Revise laws for use of reclaimed wastewater for snowmaking - Sen. Walt Sales (R)  
SB 352 - Clarify objections to water rights - Sen. John Esp (R)  
SB 358 - Repeal numeric nutrient standards for water quality - Sen. John Esp (R)

**EXECUTIVE ACTION TAKEN:**

SB 304 - Be Tabled  
SB 371 - Be Tabled  
SB 233 - Do Pass as Amended  
SB 302 - Do Pass  
SB 348 - Do Pass  
SB 284 - Do Pass  
SB 358 - Be Tabled

**Comments:**

  
\_\_\_\_\_  
SEN. Jeffrey W. Welborn, Chair

**MONTANA STATE SENATE**  
**Roll Call**  
**NATURAL RESOURCES COMMITTEE**

DATE: 2.24.21

| <u>NAME</u>                    | <u>PRESENT</u> | <u>ABSENT/<br/>EXCUSED</u> |
|--------------------------------|----------------|----------------------------|
| VICE CHAIR SMALL               | ✓              |                            |
| VICE CHAIR FLOWERS             | ✓              |                            |
| SEN. ANKNEY                    | ✓              |                            |
| SEN. BROWN                     | ✓              |                            |
| SEN. COHENOUR                  | ✓              |                            |
| SEN. GILLESPIE                 | ✓              |                            |
| SEN. HOVEN                     | ✓              |                            |
| SEN. JACOBSON                  | ✓              |                            |
| SEN. LANG <i>entered late</i>  |                | ✓                          |
| SEN. LYNCH <i>entered late</i> |                | ✓                          |
| SEN. POMNICHOWSKI              | ✓              |                            |
| CHAIRMAN WELBORN               | ✓              |                            |
|                                |                |                            |
| 12 Committee Members           |                |                            |
|                                |                |                            |



## SENATE STANDING COMMITTEE REPORT

February 24, 2021

Page 1 of 12

Mr. President:

We, your committee on **Natural Resources** report that **Senate Bill 233** (first reading copy -- white) **do pass as amended.**

Signed: \_\_\_\_\_

*Senator Jeffrey W. Welborn, Chair*

**And, that such amendments read:**

1. Title, line 7.

Following: "7-13-4517,"

Strike: "15-24-3001, 37-42-102, 37-42-321,"

2. Title, line 8

Following: "50-2-116,"

Strike: "50-79-401, 50-79-403, 75-1-220,"

Following: "75-1-1001,"

Strike: "75-2-103, 75-2-104,"

Following: "75-2-105,"

Insert: "75-2-111,"

3. Title, line 9.

Following: "75-2-212,"

Strike: "75-2-213,"

4. Title, line 10 through line 11.

Following: "75-2-302," on line 10

Strike: "75-2-401," on line 10 through "421," on line 11

5. Title, line 11.

Following: "75-2-422,"

Strike: "75-2-425, 75-2-426,"

Strike: "75-2-515,"

Following: "75-5-103,"

Strike: "75-5-105,"

Following: "75-5-201,"

Strike: "75-5-202,"

6. Title, line 13.

Following: "75-5-313,"

Strike: "75-5-314,"

**Committee Vote:**

**Yes 12, No 0**

Fiscal Note Required X

SB0233001SC.slk

Following: "75-5-402,"  
Strike: "75-5-403, 75-5-404,"

7. Title, line 14.  
Strike: "75-5-611," through "75-5-702,"  
Following: "75-5-802,"  
Strike: "75-6-102,"

8. Title, line 15.  
Strike: "75-6-109,"  
Strike: "75-6-113,"

9. Title, line 16.  
Strike: "75-10-103,"  
Strike: "75-10-203, 75-10-206,"

10. Title, line 16 through line 19.  
Strike: "75-10-223," on line 16 through "75-11-503," on line 19

11. Title, 20.  
Strike: "75-11-509," through "75-20-104,"

12. Title, line 20 through line 21.  
Following: "75-20-105,"  
Strike: "75-20-201," on line 20 through "75-20-215," on line 21

13. Title, line 21 through 22.  
Strike: "75-20-219," on line 21 through "401," on line 22

14. Title, line 22.  
Strike: "75-20-410, 75-20-411,"  
Strike: "75-20-1202,"

15. Title, line 22 through line 23.  
Strike: "75-26-301, 75-26-304,"

16. Title, line 23.  
Strike: "76-4-102," through "76-4-126,"

17. Title, line 23.  
Following: "76-4-1001,"  
Strike: "80-15-102,"

18. Title, line 24.  
Following: "82-4-102,"  
Strike: "82-4-103,"

19. Title, line 24.  
Following: "82-4-129,"  
Strike: "82-4-130, 82-4-203,"  
Following: "82-4-205,"  
Strike: "82-4-206,"

20. Title, line 25.  
Following: "82-4-226,"  
Strike: "82-4-227,"  
Following: "82-4-239,"  
Strike: "82-4-251,"  
Following: "82-4-254,"  
Strike: "82-4-303,"

21. Title, line 26.

Following: "82-4-304,"  
Strike: "82-4-305,"

22. Title, line 26 through line 27.  
Following: "82-4-342,"  
Strike: "82-4-353," on line 26 through "82-4-362," on line 27

23. Title, line 27.  
Following: "82-4-371,"  
Strike: "82-4-403,"  
Following: "82-4-422,"  
Strike: "82-4-427,"  
Following: "82-4-437,"  
Strike: "82-4-441, 82-4-442,"

24. Title, page 2, line 1.  
Following: "4-1001,"  
Insert: "AND"  
Following: "82-15-102,"  
Strike: "AND 82-15-120,"  
**Following:** "MCA;"  
**Strike:** "AND"  
Following: "SECTIONS"  
Strike: "2-15-3502, 75-2-111,"

25. Title, page 2, line 2.  
**Following:** "MCA"  
**Insert:** "AND PROVIDING AN EFFECTIVE DATE"

26. Page 4, line 10 through page 7, line 21.  
Strike: sections 4 through 6 in their entirety  
**Renumber:** subsequent sections

27. Page 10, line 7 through page 12, line 20.  
Strike: sections 8 through 10 in their entirety  
**Renumber:** subsequent sections

28. Page 13, line 25 through page 18, line 17.  
Strike: sections 12 and 13 in their entirety  
**Renumber:** subsequent sections

29. Page 19.  
Following: line 7  
Insert: **"Section 7.** Section 75-2-111, MCA, is amended to read:

**"75-2-111. Powers of board.** The board shall, subject to the provisions of 75-2-207:

~~(1) adopt, amend, and repeal rules for the administration, implementation, and enforcement of this chapter, for issuing orders under and in accordance with 42 U.S.C. 7419, and for fulfilling the requirements of 42 U.S.C. 7420 and regulations adopted pursuant to that section, except that, for purposes other than agricultural open burning, the board may not adopt permitting requirements or any other rule relating to:~~

~~(a) any agricultural activity or equipment that is associated with the use of agricultural land or the~~

~~planting, production, processing, harvesting, or storage of agricultural crops by an agricultural producer and that is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;~~

~~(b) a commercial operation relating to the activities or equipment referred to in subsection (1)(a) that remains in a single location for less than 12 months and is not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a; or~~

~~(c) forestry equipment and its associated engine used for forestry practices that remain in a single location for less than 12 months and are not subject to the requirements of 42 U.S.C. 7475, 7503, or 7661a;~~

~~(2)(1) hold hearings relating to any aspect of or matter in the administration of this chapter at a place designated by the board. The board may compel the attendance of witnesses and the production of evidence at hearings. The board shall designate an attorney to assist in conducting hearings and shall appoint a reporter who must be present at all hearings and take full stenographic notes of all proceedings, transcripts of which will be available to the public at cost.~~

~~(3)(2) issue orders necessary to effectuate the purposes of this chapter;~~

~~(4) by rule require access to records relating to emissions;~~

~~(5) by rule adopt a schedule of fees required for permits, permit applications, and registrations consistent with this chapter;~~

~~(6)(3) have the power to issue orders under and in accordance with 42 U.S.C. 7419."~~

30. Page 19, line 13.

Following: "chapter,"

Strike: "for issuing orders under and in accordance with 42 U.S.C. 7419"

31. Page 19, line 24 through line 28.

Strike: subsection (b) in its entirety

Renumber: subsequent sections

32. Page 20, line 2.

Following: "emissions;"

Insert: "and"

33. Page 20, line 4 through line 5.

Following: "chapter"

Strike: "i" on line 4 through "7419" on line 5

34. Page 20, line 8.

Following: "the"

Strike: "former"

Following: "board"

Strike: "of environmental review"

35. Page 22, line 4.  
Strike: "shall"  
Insert: "must"
36. Page 22, line 25.  
Strike: "has obtained"  
Insert: "obtains"
37. Page 23, line 4.  
Following: "study"  
Insert: "must"
38. Page 28, line 3.  
Strike: "department"  
Insert: "board"
39. Page 28, line 6.  
Strike: "department"  
Insert: "board"
40. Page 28, line 11.  
Strike: "department"  
Insert: "board"
41. Page 28, line 16.  
Strike: "department"  
Insert: "board"
42. Page 28, line 15.  
Strike: "department"  
Insert: "board"
43. Page 28, line 16.  
Strike: "department"  
Insert: "board"
44. Page 31, line 3 through page 33, line 12.  
Strike: section 24 in its entirety  
**Renumber:** subsequent sections
45. Page 33, line 16.  
Strike: "has issued"  
Insert: "issues"
46. Page 33, line 24.  
Strike: "has provided"  
Insert: "provides"
47. Page 34, line 9.  
Strike: "has reached"  
Insert: "reaches"
48. Page 34, line 12.  
Strike: "has issued"  
Insert: "issues"
49. Page 37, line 8.  
Strike: "department"  
Insert: "board"
50. Page 37, line 11.  
Following: "all"  
Strike: "of"



51. Page 38, line 12.  
Strike: "department"  
Insert: "board"

52. Page 38, line 14.  
Following: "hearing"  
Strike: "before the"

53. Page 38, line 15.  
Following: "~~board~~"  
Strike: "department"

54. Page 38, line 19.  
Strike: "department"  
Insert: "board"

55. Page 38, line 24.  
Strike: "department"  
Insert: "board"

56. Page 38, line 26.  
Strike: "department"  
Insert: "board"

57. Page 38, line 27.  
Strike: "department"  
Insert: "board"

58. Page 39, line 4.  
Strike: "department"  
Insert: "board"

59. Page 41, line 2.  
Following: "~~board~~"  
Strike: "department"

60. Page 41, line 28.  
Following: "~~board~~"  
Insert: "to the board"

61. Page 42, line 8.  
Strike: "department"  
Insert: "board"

62. Page 49, line 16 through page 53, line 20.  
Strike: sections 35 through 38 in their entirety  
**Renumber:** subsequent sections

63. Page 54, line 25 through page 55, line 19.  
**Strike:** sections 40 and 41 in their entirety  
**Renumber:** subsequent sections

64. Page 56, line 4 through page 57, line 5.  
Strike: section 43 in its entirety  
**Renumber:** subsequent sections

65. Page 57.  
Following: line 24  
Insert: "(3) "Board" means the board of environmental review provided for in  
2-15-3502."  
**Renumber:** subsequent subsections

66. Page 61, line 13.  
Strike: "(29)(b)(iii)"  
Insert: "(30)(b)(iii)"

67. Page 63.  
Following: line 16  
Insert: "(3) 'Board' means the board of environmental review provided for in  
2-15-3502."  
**Renumber:** subsequent subsections

68. Page 67, line 8.  
Strike: "(29)(b)(iii) and (29)(b)(iv)"  
Insert: "(30)(b)(iii) and (30)(b)(iv)"

69. Page 68, line 25 through page 69, line 10.  
Strike: section 45 in its entirety  
**Renumber:** subsequent sections

70. Page 69, line 13.  
Following: "council"  
Insert: ", board"

71. Page 69, line 19.  
Following: "council"  
Insert: ", board"

72. Page 70, line 10 through line 13.  
Strike: section 48 in its entirety  
**Renumber:** subsequent sections

73. Page 71, line 5.  
Strike: "department"  
Insert: "board"

74. Page 71, line 6.  
Strike: "department"  
Insert: "board"

75. Page 71, line 12.  
Strike: "department"  
Insert: "board"

76. Page 72, line 13.  
Strike: "giving consideration to"  
Insert: "considering"

77. Page 72, line 15.  
Following: "Standards"  
Strike: "adopted by the ~~board~~ department"

78. Page 75, line 12.  
Strike: "department"  
Insert: "board"

79. Page 75, line 18.  
Strike: "department"  
Insert: "board"

80. Page 79, line 3.  
Strike: "department"  
Insert: "board"

81. Page 79, line 4.  
Strike: "department 's"  
Insert: "board's"
82. Page 87, line 1 through line 14.  
Strike: section 62 in its entirety  
**Renumber:** subsequent sections
83. Page 97, line 13 through page 98, line 10.  
Strike: section 68 and section 69 in their entirety  
**Renumber:** subsequent sections
84. Page 101, line 4.  
Strike: "department"  
Insert: "board"
85. Page 101, line 11.  
Strike: "department"  
Insert: "board"
86. Page 101, line 26 through page 110, line 16.  
Strike: sections 74 through 78 in their entirety  
**Renumber:** subsequent sections
87. Page 111, line 1 through page 112, line 28.  
Strike: Section 80 in its entirety  
**Renumber:** subsequent sections
88. Page 115, line 2.  
Following: "department"  
Insert: "or the board"
89. Page 117, line 4.  
Strike: "department"  
Insert: "board"
90. Page 117, line 25.  
Following: "~~board~~"  
Insert: "to the board"
91. Page 118, line 3 through page 119, line 6.  
Strike: section 86 in its entirety  
**Renumber:** subsequent sections
92. Page 119, line 20 through line 24.  
Strike: section 88 in its entirety  
**Renumber:** subsequent sections
93. Page 122, line 5 through page 123, line 10.  
Strike: section 92 in its entirety  
**Renumber:** subsequent sections
94. Page 127, line 3 through page 129, line 9.  
Strike: Sections 96 and 97 in their entirety  
**Renumber:** subsequent sections
95. Page 130, line 1 through page 157, line 18.  
Strike: Section 99 through section 127 in their entirety  
**Renumber:** subsequent sections
96. Page 159, line 7.

Following: "considered"  
Strike: "to be"

97. Page 159, line 16 through page 168, line 10.  
Strike: Section 130 through section 135 in their entirety  
**Renumber:** subsequent sections

98. Page 168, line 16 through page 172, line 28.  
Strike: section 137 through section 141 in their entirety  
**Renumber:** subsequent sections

99. Page 174, line 17 through page 183, line 20.  
Strike: section 143 through section 148 in their entirety  
**Renumber:** subsequent sections

100. Page 183, line 23.  
Following: "~~board~~"  
Strike: "department"

101. Page 183, line 24.  
Following: "department"  
Insert: "or board"

102. Page 184, line 14.  
Following: "~~board~~"  
Insert: "board or"

103. Page 184, line 16.  
Following: "issued"  
Strike: "hereunder"

104. Page 184, line 19 through page 185, line 9.  
Strike: section 151 and section 152 in their entirety  
**Renumber:** subsequent sections

105. Page 185, line 24 through page 186, line 6.  
Strike: section 154 in its entirety  
**Renumber:** subsequent sections

106. Page 187, line 17 through page 191, line 20.  
Strike: section 157 and 158 in their entirety  
**Renumber:** subsequent sections

107. Page 193, line 28 through page 197, line 15.  
Strike: section 160 through section 162 in their entirety  
**Renumber:** subsequent sections

108. Page 198, line 20 through page 200, line 20.  
Strike: section 164 in its entirety  
**Renumber:** subsequent sections

109. Page 202, line 16.  
Following: "board"  
Strike: "of environmental review"

110. Page 202, line 18.  
Strike: "department of environmental quality"  
Insert: "board"

111. Page 202, line 19.  
Strike: "department of environmental quality"  
Insert: "board"

112. Page 202, line 20.

Strike: "it"

Insert: "the department"

113. Page 202, line 23 through line 24.

Strike: "department" on line 23 through "quality" on line 14

Insert: "board"

114. Page 202, line 25.

Strike: "department of environmental quality"

Insert: "board"

115. Page 202, line 26.

Following: "board"

Strike: "of environmental review"

116. Page 205, line 13 through page 206, line 14.

Strike: Section 169 in its entirety

**Renumber:** subsequent sections

117. Page 207, line 8.

Strike: "department"

Insert: "board"

118. Page 208, line 2.

Following: "department"

Insert: "and the board"

119. Page 208, line 4.

Strike: "department"

Insert: "board"

120. Page 208, line 15 through page 216, line 16.

Strike: Sections 173 and 174 in their entirety

**Renumber:** subsequent sections

121. Page 216, line 19.

Following: "**department**"

Insert: "**and board**"

122. Page 217, line 14.

Strike: "(i) shall conduct contested case hearings under this part;"

**Renumber:** subsequent subsections

123. Page 217, line 18.

Following: "~~part.~~"

Insert: "(2) The board shall conduct contested case hearings under this part."

124. Page 217, line 20 through page 3.

Strike: section 176 in its entirety

**Renumber:** subsequent sections

125. Page 222, line 12 through page 226, line 24.

Strike: section 180 in its entirety

**Renumber:** subsequent sections

126. Page 229, line 24.

Strike: "record"

Insert: "notify the board"

127. Page 229, line 28.

Strike: "department"  
Insert: "board"

128. Page 230, line 1  
Strike: "department"  
Insert: "board"

129. Page 244, line 6 through page 247, line 2.  
Strike: section 186 in its entirety  
**Renumber:** subsequent sections

130. Page 248, line 6.  
Strike: "department"  
Insert: "board"

131. Page 248, line 6.  
Following: the second "~~board~~"  
Strike: "department"  
**Insert:** "board"

132. Page 248, line 8.  
Strike: "department"  
Insert: "board"

133. Page 248, line 10.  
Strike: "department" in two places  
Insert: "board" in two places

134. Page 248, line 12.  
Strike: "department"  
Insert: "board"

135. Page 250, line 2 through page 255, line 10.  
Strike: section 188 in its entirety  
**Renumber:** subsequent sections

136. Page 255, line 22 through page 260, line 9.  
Strike: section 190 in its entirety  
**Renumber:** subsequent sections

137. Page 268, line 3.  
Strike: "department"  
Insert: "board"

138. Page 268, line 11.  
Strike: "department"  
Insert: "board"

139. Page 268, line 13.  
Strike: "department"  
**Insert:** "board"

140. Page 270, line 20.  
Following: "may"  
Strike: "thereafter"

141. Page 274, line 8 through page 277, line 22.  
Strike: section 198 through section 200 in their entirety  
**Renumber:** subsequent sections

142. Page 279, line 13 through page 281, line 8.  
Strike: section 202 in its entirety

**Renumber:** subsequent sections

143. Page 282, line 7.

Strike: "; and"

Insert: "."

144. Page 282, line 8.

Strike: "(c)"

Insert: "(3) The board shall"

145. Page 282, line 13 through page 283, line 17.

Strike: section 205 in its entirety

**Renumber:** subsequent sections

146. Page 284, line 13 through page 287, line 3.

Strike: sections 207 and 208 in their entirety

**Renumber:** subsequent sections

147. Page 290, line 13 through page 291, line 15.

Strike: section 212 in its entirety

**Renumber:** subsequent sections

148. Page 291, line 19 through line 20.

Strike: lines 19 and 20 in their entirety

149. Page 291, line 26 through page 292, line 1.

Strike: section 214 in its entirety

Insert: "NEW SECTION. Section 207. Transition. Rulemaking authority and existing rules under the jurisdiction of the board of environmental review are transferred to the department of environmental quality on [the effective date of this act].

NEW SECTION. Section 208. Effective date. [This act] is effective July 1, 2021."

- END -



## SENATE STANDING COMMITTEE REPORT

February 24, 2021

Page 1 of 1

Mr. President:

We, your committee on **Natural Resources** report that **Senate Bill 302** (first reading copy -- white) **do pass**.

Signed: \_\_\_\_\_

*Senator Jeffrey W. Welborn, Chair*

- END -

**Committee Vote:**

**Yes 11, No 0**

Fiscal Note Required   X  

SB0302001SC.slk





## SENATE STANDING COMMITTEE REPORT

February 24, 2021

Page 1 of 1

Mr. President:

We, your committee on **Natural Resources** report that **Senate Bill 348** (first reading copy -- white) **do pass**.

Signed: \_\_\_\_\_

*Senator Jeffrey W. Welborn, Chair*

- END -

**Committee Vote:**

**Yes 11, No 0**

Fiscal Note Required ☐

SB0348001SC.slk



## SENATE STANDING COMMITTEE REPORT

February 24, 2021

Page 1 of 1

Mr. President:

We, your committee on **Natural Resources** report that **Senate Bill 284** (first reading copy -- white) **do pass**.

Signed: \_\_\_\_\_

*Senator Jeffrey W. Welborn, Chair*

- END -

**Committee Vote:**

**Yes 7, No 5**

Fiscal Note Required   X  

SB0284001SC.slk

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COMMITTEE FILE COPY

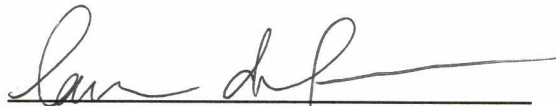
## BILL TABLED NOTICE

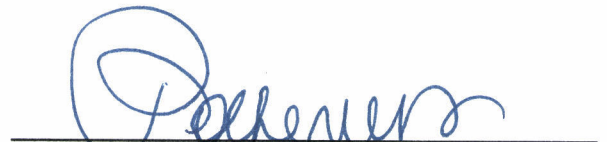
### SENATE NATURAL RESOURCES COMMITTEE

The **SENATE NATURAL RESOURCES COMMITTEE** TABLED

**SB 304 - Revise establishment of stock water rights on federal land - Sen. Mike Lang (R)**  
**SB 358 - Repeal numeric nutrient standards for water quality - Sen. John Esp (R)**  
**SB 371 - Repeal CSKT water rights compact - Sen. Bob Keenan (R)**

by motion, on **Wednesday, February 24, 2021** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

  
(For the Committee)

  
(For the Secretary of the Senate)  
6:15p / 2/24  
(Time) (Date)

February 24, 2021 (6:10pm)

Lauren de Paepe, Secretary

Phone: 444-4618

**MONTANA STATE SENATE**  
**Roll Call Vote**  
**NATURAL RESOURCES COMMITTEE**

DATE 2-24-21 BILL NO SB 233 MOTION NO. \_\_\_\_\_

MOTION: do pass as amended

| <u>NAME</u>          | AYE | NO | Proxy |
|----------------------|-----|----|-------|
| VICE CHAIR SMALL     | ✓   |    |       |
| VICE CHAIR FLOWERS   | ✓   |    |       |
| SEN. ANKNEY          | ✓   |    |       |
| SEN. BROWN           | ✓   |    |       |
| SEN. COHENOUR        | ✓   |    |       |
| SEN. GILLESPIE       | ✓   |    |       |
| SEN. HOVEN           | ✓   |    |       |
| SEN. JACOBSON        | ✓   |    |       |
| SEN. LANG            | ✓   |    |       |
| SEN. LYNCH           | ✓   |    | ✓     |
| SEN. POMNICHOWSKI    | ✓   |    |       |
| CHAIRMAN WELBORN     | ✓   |    |       |
|                      |     |    |       |
| 12 COMMITTEE MEMBERS | 12  |    |       |

**MONTANA STATE SENATE**  
**Roll Call Vote**  
**NATURAL RESOURCES COMMITTEE**

DATE 2.24.21 BILL NO SB 284 MOTION NO. \_\_\_\_\_

MOTION: Do pass

| <u>NAME</u>          | <u>AYE</u> | <u>NO</u> | <u>Proxy</u> |
|----------------------|------------|-----------|--------------|
| VICE CHAIR SMALL     | ✓          |           | ✓            |
| VICE CHAIR FLOWERS   |            | ✓         |              |
| SEN. ANKNEY          | ✓          |           | ✓            |
| SEN. BROWN           | ✓          |           |              |
| SEN. COHENOUR        |            | ✓         |              |
| SEN. GILLESPIE       | ✓          |           |              |
| SEN. HOVEN           | ✓          |           |              |
| SEN. JACOBSON        |            | ✓         |              |
| SEN. LANG            | ✓          |           | ✓            |
| SEN. LYNCH           |            | ✓         |              |
| SEN. POMNICHOWSKI    |            | ✓         |              |
| CHAIRMAN WELBORN     | ✓          |           |              |
|                      |            |           |              |
| 12 COMMITTEE MEMBERS | 7          | 5         |              |

**MONTANA STATE SENATE**  
**Roll Call Vote**  
**NATURAL RESOURCES COMMITTEE**

DATE 2-24-21 BILL NO SB358 MOTION NO. \_\_\_\_\_

MOTION: Be tabled

| <u>NAME</u>          | AYE | NO | Proxy |
|----------------------|-----|----|-------|
| VICE CHAIR SMALL     |     | ✓  | ✓     |
| VICE CHAIR FLOWERS   | ✓   |    |       |
| SEN. ANKNEY          |     | ✓  | ✓     |
| SEN. BROWN           |     | ✓  |       |
| SEN. COHENOUR        | ✓   |    |       |
| SEN. GILLESPIE       |     | ✓  |       |
| SEN. HOVEN           | ✓   |    |       |
| SEN. JACOBSON        | ✓   |    |       |
| SEN. LANG            |     | ✓  | ✓     |
| SEN. LYNCH           | ✓   |    |       |
| SEN. POMNICHOWSKI    | ✓   |    |       |
| CHAIRMAN WELBORN     | ✓   |    |       |
|                      |     |    |       |
| 12 COMMITTEE MEMBERS | 7   | 5  |       |

# SENATE PROXY

I, Senator Michelle Kang, hereby authorize Senator Haven Steinbock to vote my proxy before the Senate Natural Resources meeting held on \_\_\_\_\_, 2021.

Senator Signature

2/24/21  
Date

Said authorization is as follows: *(mark only one)*

- ☐ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

[illegible]

# SENATE PROXY

I, Senator Small, hereby authorize Senator Welborn to vote my proxy before the Senate Natural Resources meeting held on February 24, 2021.

  
\_\_\_\_\_  
Senator Signature

2/24/21  
Date

Said authorization is as follows: *(mark only one)*

- ☐ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☒ Votes only as directed below.

[illegible]



# SENATE PROXY

I, Senator Ankney, hereby authorize Senator Welborn to vote my proxy before the Senate Natural Resources meeting held on February 24, 2021.

  
\_\_\_\_\_  
Senator Signature

2-24-21  
Date

Said authorization is as follows: *(mark only one)*

- ☐ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☒ Votes only as directed below.

[illegible]

# SENATE PROXY

I, Senator Ryan Lynch, hereby authorize Senator Jacobson & Flowers to vote my proxy before the Senate Natural Resources meeting held on 2 - 24, 2021.

BS  
Senator Signature

2/24/21  
Date

Said authorization is as follows: *(mark only one)*

- ☐ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☒ Votes only as directed below.

[illegible]

## MONTANA STATE SENATE

## Visitors Register

## SENATE NATURAL RESOURCES COMMITTEE

**Wednesday, February 24, 2021**

## SB 352 - Clarify objections to water rights

Sponsor: **Sen. John Esp (R)**

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**



# SENATE NATURAL RESOURCES COMMITTEE

Sponsor: **Sen. John Esp (R)**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

**MONTANA STATE SENATE**  
**Visitors Register**  
**SENATE NATURAL RESOURCES COMMITTEE**

**Wednesday, February 24, 2021**

**SB 284 - Generally revise county gravel pit permitting**

**Sponsor: Sen. Russel (Russ) Tempel (R)**

**PLEASE PRINT**

| Name                        | Representing                         | Support | Oppose | Info |
|-----------------------------|--------------------------------------|---------|--------|------|
| Bob Gilbert                 | Phillips County<br>+ Musselshell Co. | X       |        |      |
| Glenn Marx                  | MACT                                 |         | X      |      |
| John Ostlund                | MACO Yellowstone Po                  | X       |        |      |
| Todd Deulin                 | MACO / Prairie                       | X       |        |      |
| Shelby DeMars               | MT Assoc. of Oil, Gas + Coal         | X       |        |      |
| Larry Erickson              | MACO Liberty County                  | X       |        |      |
| Eric Bruner                 | MACO                                 | ✓       |        |      |
| Shane Gordier               | Richland Co.                         | X       |        |      |
| James Ghekiere              | Liberty County                       | X       |        |      |
| Steve Wade                  | MCA                                  |         | X      |      |
| Whitner Chase OR Jake Brown | MCA                                  |         | X      |      |
| Dave Galt                   | Mt. Contractors                      |         | X      |      |
| Miguel St. Lawrence         | MT Mfg. Industry Assoc.              | X       |        |      |
|                             |                                      |         |        |      |
|                             |                                      |         |        |      |
|                             |                                      |         |        |      |
|                             |                                      |         |        |      |
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|                             |                                      |         |        |      |
|                             |                                      |         |        |      |
|                             |                                      |         |        |      |

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.



## SENATE NATURAL RESOURCES COMMITTEE

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

**Public Comment Requests**  
**Senate Natural Resources**  
**Meeting Date: 02/24/2021    Meeting Time: 3:00 pm**

| Bill   | Position                | Name               | Affiliation                       | Location | Email                 |
|--------|-------------------------|--------------------|-----------------------------------|----------|-----------------------|
| SB-284 | Opponents               | Amy Seaman         | Montana Audubon                   | Helena   | aseaman@mtaudubon.org |
|        |                         | Ed Coleman         | MT Dept. of Environmental Quality | Helena   | ecoleman@mt.gov       |
|        |                         | Mike Newton        | Fisher Sand & Gravel Co.          | Glendive | mnewton@fisherind.com |
|        | Informational Witnesses | Christopher Cronin | MT Dept. of Environmental Quality | Helena   | ccronin@mt.gov        |

| Bill   | Position                | Name            | Affiliation                                  | Location | Email             |
|--------|-------------------------|-----------------|----------------------------------------------|----------|-------------------|
| SB-302 | Informational Witnesses | Shawn Thomas    | DNRC                                         | Helena   | sthomas@mt.gov    |
|        |                         | Brian Bramblett | MT. Dept of Natural Resources & Conservation | Helena   | bbramblett@mt.gov |

| Bill   | Position                | Name           | Affiliation | Location | Email           |
|--------|-------------------------|----------------|-------------|----------|-----------------|
| SB-348 | Informational Witnesses | Millie Heffner | DNRC        | Helena   | mheffner@mt.gov |
|        |                         | Laura Rennick  | DNRC        | Helena   | lrennick@mt.gov |
|        |                         | Kevin Smith    | DEQ         | Helena   | ksmith@mt.gov   |

| Bill   | Position                | Name                    | Affiliation          | Location   | Email                         |
|--------|-------------------------|-------------------------|----------------------|------------|-------------------------------|
| SB-352 | Proponent               | Alan Redfield           |                      | Livingston | redfield4mt@gmail.com         |
|        | Opponents               | Andrew Gorder           | Clark Fork Coalition |            | andrew@clarkfork.org          |
|        | Informational Witnesses | Millie Heffner          | DNRC                 | Helena     | mheffner@mt.gov               |
|        |                         | Anna Pakenham Stevenson |                      | Helena     | anna.pakenhamstevenson@mt.gov |

| Bill   | Position  | Name           | Affiliation                    | Location   | Email                                    |
|--------|-----------|----------------|--------------------------------|------------|------------------------------------------|
| SB-358 | Proponent | Tim Burton     | Mt. League of Cities and Towns | Helena     | tim.burton@mtleague.net                  |
|        | Opponents | Jerry Iverson  | Cottonwood Resource Council    | Big Timber | JLiverson@outlook.com                    |
|        |           | Bill Muldoon   |                                |            | muldoonwj@gmail.com                      |
|        |           | Andrew Gorder  | Clark Fork Coalition           |            | andrew@clarkfork.org                     |
|        |           | Sarah Zuzulock |                                |            | Sarah@zuzulockenvironmental.com          |
|        |           | Betsy Baxter   |                                |            | mebaxter@hotmail.com                     |
|        |           | Paul Hawks     |                                |            | hawk@mtintouch.net (undeliverable email) |



## **MINUTES**

### **MONTANA SENATE 67th LEGISLATURE - REGULAR SESSION COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** Chair Jeffrey W. Welborn, on February 26, 2021 at 3:20 PM, in Room 303 Capitol

#### **ROLL CALL**

**Members Present in the Committee Room:**

Sen. Jeffrey W. Welborn, Chair (R)  
Sen. Jason D. Small, Vice Chair (R)  
Sen. Pat Flowers, Vice Chair (D)  
Sen. Bob Brown (R)  
Sen. Jill Cohenour (D)  
Sen. Bruce Gillespie (R)  
Sen. Brian Hoven (R)  
Sen. Tom Jacobson (D)  
Sen. Mike Lang (R)  
Sen. Ryan Lynch (D)

**Members Present by Zoom Video Conference:**

Sen. JP Pomnichowski (D)

**Members Excused:**

Sen. Duane Ankney (R)

**Members Absent:** None

**Staff Present:** Lauren de Paepe, Committee Secretary  
Jason Mohr, Legislative Branch  
Jacquie Simmons, Remote Meeting Coordinator

**Audio Committees:** These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

**Committee Business Summary:**

Hearing & Date Posted: SB 328, 2/22/2021; SJ 7, 2/19/2021; SJ 16, 2/23/2021; SJ 21, 2/26/2021; SR 81, 2/19/2021  
Executive Action: SB 37 - Be Tabled; SJ 21 - Do Pass; SR 81 - Be Adopted; SB 324 - Be Tabled; SB 358 - Do Pass; SB 328 - Do Pass; SB 352 - Do Pass as Amended; SJ 16 - Do Pass; SJ 7 - Do Pass; SB 180 - Do Pass as Amended; SB 164 - Do Pass as Amended

**EXECUTIVE ACTION ON SB 37**

15:23:13 **Motion/Vote:** Sen. Brown moved that **SB 37 BE TABLED**. Motion carried 9-0 by voice vote. Sen. Ankney, Sen. Lynch and Sen. Pomnichowski were excused.

**EXHIBIT(nas41a01)**

15:23:42 Chair Welborn gave the duties of the chair to Vice Chair Small.

**HEARING ON SR 81**

**Opening Statement by Sponsor:**

15:24:00 Sen. Jeffrey Welborn (R), SD 36, opened the hearing on SR81, Confirm Governor's appointee to the Board of Environmental Review.

**Proponents' Testimony:**

15:24:44 Liane Taylor, board and appointments advisor, Governor's office

**EXHIBIT(nas41a02)**

15:25:41 Abigail St. Lawrence, Montana Building Industry Association

15:26:19 Alan Olson, executive director, Montana Petroleum Association

15:26:47 Peggy Trenk, citizen; Treasure State Resources Association

15:27:58 Jessie Luther, Idaho Forest Group

15:28:31 Clayton Elliott, Montana Trout Unlimited

15:29:09 Jay Bodner, Montana Stockgrowers Association

15:29:38 Nicole Rolf, Montana Farm Bureau Federation

15:30:29 Paul McKenzie, F.H. Stoltze Land & Lumber Company

**EXHIBIT(nas41a03)**

**Additional Testimony Received:**

**EXHIBIT(nas41a04)**

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:** None

**Closing by Sponsor:**

15:32:15 Sen. Welborn

**HEARING ON SJ 7**

**Opening Statement by Sponsor:**

15:34:04 Sen. Jeffrey Welborn (R), SD 36, opened the hearing on SJ7, Resolution to remove Hidden Pasture Creek from WSA.

Sen. Pomnichowski entered the meeting.

**Proponents' Testimony:**

15:36:15 Jeff Johnson, Dell

[EXHIBIT\(nas41a05\)](#)

15:40:26 Sen. Lynch entered the meeting.

15:41:12 Ryan Hall, Montana Electric Cooperatives' Association

[EXHIBIT\(nas41a06\)](#)

15:42:08 Byron Martinell, chairman, Beaverhead Conservation District

[EXHIBIT\(nas41a07\)](#)

15:48:41 Jeff Tiberi, Montana Association of Conservation Districts

[EXHIBIT\(nas41a08\)](#)

15:49:19 Nicole Rolf, Montana Farm Bureau Federation

15:50:01 Jay Bodner, Montana Stockgrowers Association

15:50:58 Shelby DeMars, United Property Owners of Montana

**Additional Testimony Received:**

[EXHIBIT\(nas41a09\)](#)

**Opponents' Testimony:**

15:52:09 Noah Marion, Montana Wilderness Association

[EXHIBIT\(nas41a10\)](#)

15:54:35 Colin Cooney, Trout Unlimited (TU)

15:56:47 Mike Wilkinson, Wise River

[EXHIBIT\(nas41a11\)](#)

15:57:48 Alan Weltzien, Dillon

[EXHIBIT\(nas41a12\)](#)

16:01:11 Jack Kirkley, Dillon

**Additional Testimony Received:**

[EXHIBIT\(nas41a13\)](#)

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

16:04:02 Sen. Gillespie

16:04:47 Mr. Cooney, TU

16:05:46 Sen. Lang

16:06:30 Mr. Cooney

**Closing by Sponsor:**

16:06:51 Sen. Welborn

16:12:14 Chair Small gave the duties of the chair to Sen. Welborn.

**HEARING ON SB 328**

**Opening Statement by Sponsor:**

16:12:59 Sen. Jason D. Small (R), SD 21, on behalf of Sen. Duane Ankney, opened the hearing on SB328, Revise coal bonding laws.

**Proponents' Testimony:**

16:16:15 Darryl James, Westmoreland Mining

**EXHIBIT(nas41a14)**

16:22:34 Bob Gilbert, City of Colstrip

16:23:34 Molly Schwend, executive director, Montana Coal Council

16:25:49 Shelby DeMars, Montana Association of Oil, Gas, & Coal Counties

16:27:12 Peggy Trenk, Treasure State Resources Association

**Opponents' Testimony:**

16:28:16 Derf Johnson, Montana Environmental Information Center

16:35:02 Steve Charter, Shepherd; Northern Plains Resource Council member

**Informational Testimony:**

16:38:57 Ed Coleman, Coal and Open Cut Mining Bureau chief, Department of Environmental Quality (DEQ)

16:39:25 Jesse Noel, environmental regulatory director, Westmoreland Mining

**Questions from Committee Members and Responses:**

16:39:51 Sen. Brown

16:41:54 Mr. James, Westmoreland Mining

16:43:43 Sen. Gillespie

16:44:33 Mr. James

16:45:20 Sen. Flowers

16:46:30 Mr. Coleman, DEQ

**Closing by Sponsor:**

16:47:42 Sen. Small

**HEARING ON SJ 16**

**Opening Statement by Sponsor:**

16:48:38 Sen. Steve Hinebauch (R), SD 18, opened the hearing on SJ16, Urge support for Keystone XL pipeline.

**Proponents' Testimony:**

16:52:48 Michael Freeman, Governor's office

16:54:10 Alan Olson, executive director, Montana Petroleum Association

16:58:20 Shelby DeMars, Montana Association of Oil, Gas, & Coal Counties

**EXHIBIT(nas41a15)**

17:01:07 Bridger Mahlum, Montana Chamber of Commerce

17:02:06 Ryan Hall, Montana Electric Cooperatives' Association  
17:03:26 Nicole Rolf, Montana Farm Bureau Federation  
17:04:27 Peggy Trenk, Treasure State Resources Association

Additional Testimony Received:

[EXHIBIT\(nas41a16\)](#)

**Opponents' Testimony:**

17:05:38 Josh Butterfly, citizen

[EXHIBIT\(nas41a17\)](#)

17:07:11 Laurie Little Dog, citizen

17:08:47 Dalayah Killsback, deputy political director, Western Native Voice

17:11:49 Cari Kimball, Montana Environmental Information Center

[EXHIBIT\(nas41a18\)](#)

17:14:34 Colette Werk, Fort Belknap

[EXHIBIT\(nas41a19\)](#)

17:15:52 Alvin "Jim" Kennedy, Fort Belknap

17:17:45 Andy Werk Jr., president, Fort Belknap Indian Community Council

[EXHIBIT\(nas41a20\)](#)

Additional Testimony Received:

[EXHIBIT\(nas41a21\)](#)

**Informational Testimony:** None

**Questions from Committee Members and Responses:**

17:19:32 Sen. Lang

17:19:57 Sen. Hinebauch

**Closing by Sponsor:**

17:20:24 Sen. Hinebauch

**HEARING ON SJ 21**

**Opening Statement by Sponsor:**

17:22:32 Sen. Mike Cuffe (R), SD 1, opened the hearing on SJ21, Resolution on Columbia River Treaty.

**Proponents' Testimony:**

17:29:31 Colin Cooney, Trout Unlimited

**Opponents' Testimony:** None

**Informational Testimony:** None

**Questions from Committee Members and Responses:** None

**Closing by Sponsor:**

17:31:01 Sen. Cuffe

17:31:53 Recess

18:03:57 Reconvene

**EXECUTIVE ACTION ON SJ 21**

18:04:05 **Motion/Vote:** Sen. Small moved that **SJ 21 DO PASS**. Motion carried unanimously by voice vote. Sen. Ankney voted by proxy.

**EXECUTIVE ACTION ON SR 81**

18:05:04 **Motion:** Sen. Small moved that **SR 81 BE ADOPTED**.

**Discussion:**

18:05:20 Chair Welborn

18:05:47 Sen. Cohenour

18:06:07 **Vote:** Motion carried 7-5 by roll call vote with Sen. Cohenour, Sen. Flowers, Sen. Jacobson, Sen. Lynch and Sen. Pomnichowski voting no. Sen. Ankney voted by proxy.

**EXECUTIVE ACTION ON SB 324**

18:06:44 **Motion:** Sen. Small moved that **SB 324 DO PASS**.

18:07:05 **Motion:** Sen. Small moved that **SB 324 BE AMENDED**.

[EXHIBIT](#)(nas41a22)

**Discussion:**

18:07:25 Sen. Lynch

18:07:31 Jason Mohr, Legislative Services Division (LSD)

18:08:00 Sen. Cohenour

18:08:26 Sen. Flowers

18:09:12 **Vote:** Motion carried 7-5 by roll call vote with Sen. Cohenour, Sen. Flowers, Sen. Jacobson, Sen. Lynch and Sen. Pomnichowski voting no. Sen. Ankney voted by proxy.

18:09:50 **Motion:** Sen. Small moved that **SB 324 DO PASS AS AMENDED**.

**Discussion:**

18:09:58 Sen. Jacobson

18:10:41 Christopher Dorrington, director, Department of Environmental Quality (DEQ)

18:11:44 Sen. Lang

18:14:18 Mr. Dorrington, DEQ

18:14:48 Sen. Lynch

18:15:05 Mr. Dorrington

18:15:58 Sen. Brown  
 18:16:45 Chair Welborn  
 18:16:52 Sen. Cuffe  
 18:18:16 Chair Welborn  
 18:18:39 Sen. Cuffe  
 18:19:41 Sen. Cohenour

**EXHIBIT(nas41a23)**

18:22:48 **Vote:** Motion failed 5-7 by roll call vote with Sen. Brown, Sen. Gillespie, Sen. Hoven, Sen. Lang and Sen. Small voting aye. Sen. Ankney voted by proxy.

18:23:44 **Motion/Vote:** Sen. Cohenour moved that **SB 324 BE TABLED**. Motion carried unanimously by roll call vote. Sen. Ankney voted by proxy.

**EXECUTIVE ACTION ON SB 358**

18:24:38 **Motion:** Sen. Lang moved that **SB 358 BE REMOVED FROM TABLE**.

**Discussion:**

18:24:53 Sen. Lang  
 18:25:27 Chair Welborn  
 18:26:20 Sen. Small  
 18:26:24 Jason Mohr, Legislative Services Division (LSD)  
 18:26:36 Chair Welborn

18:27:08 **Vote:** Motion carried 9-3 by roll call vote with Sen. Cohenour, Sen. Flowers and Sen. Pomnichowski voting no. Sen. Ankney voted by proxy.

18:27:52 **Motion:** Sen. Small moved that **SB 358 DO PASS**.

**Discussion:**

18:28:04 Sen. Jacobson  
 18:28:42 Sen. Cohenour  
 18:29:33 Sen. Flowers  
 18:31:14 Sen. Lynch

18:31:48 **Vote:** Motion carried 9-3 by roll call vote with Sen. Cohenour, Sen. Flowers and Sen. Pomnichowski voting no. Sen. Ankney voted by proxy.

**EXECUTIVE ACTION ON SB 328**

18:32:26 **Motion/Vote:** Sen. Small moved that **SB 328 DO PASS**. Motion carried 10-2 by roll call vote with Sen. Cohenour and Sen. Pomnichowski voting no. Sen. Ankney voted by proxy.

**EXECUTIVE ACTION ON SB 352**

18:34:09 **Motion:** Sen. Small moved that **SB 352 DO PASS**.

18:34:19 **Motion:** Sen. Small moved that **SB 352 BE AMENDED.**  
[EXHIBIT\(nas41a24\)](#)

**Discussion:**

18:34:34 Sen. Small

18:34:56 **Vote:** Motion carried unanimously by voice vote. Sen. Ankney voted by proxy.

18:35:11 **Motion:** Sen. Small moved that **SB 352 BE AMENDED.**  
[EXHIBIT\(nas41a25\)](#)

**Discussion:**

18:35:22 Sen. Flowers

18:36:29 Jason Mohr, Legislative Services Division (LSD)

18:36:38 Sen. Flowers

18:36:48 Chair Welborn

18:37:02 Sen. Flowers

18:37:17 Chair Welborn

18:37:28 Sen. Lang

18:37:52 Mr. Mohr, LSD

18:38:27 Sen. Lang

18:38:56 **Vote:** Motion failed 6-6 by roll call vote with Sen. Cohenour, Sen. Flowers, Sen. Jacobson, Sen. Lynch, Sen. Pomnichowski and Sen. Welborn voting aye. Sen. Ankney voted by proxy.

18:39:42 **Motion/Vote:** Sen. Small moved that **SB 352 DO PASS AS AMENDED.** Motion carried 7-5 by roll call vote with Sen. Cohenour, Sen. Flowers, Sen. Jacobson, Sen. Lynch and Sen. Pomnichowski voting no. Sen. Ankney voted by proxy.

**EXECUTIVE ACTION ON SJ 16**

18:40:37 **Motion:** Sen. Small moved that **SJ 16 DO PASS.**

18:40:55 **Motion:** Sen. Small moved that **SJ 16 BE AMENDED.**  
[EXHIBIT\(nas41a26\)](#)

**Discussion:**

18:41:42 Sen. Jacobson

18:42:09 Sen. Lynch

18:42:50 **Vote:** Motion failed 4-8 by roll call vote with Sen. Brown, Sen. Gillespie, Sen. Hoven and Sen. Lang voting aye. Sen. Ankney voted by proxy.

**Discussion:**

18:43:47 Sen. Flowers

18:44:40 Sen. Lang

18:45:56 **Vote:** Motion carried 9-3 by roll call vote with Sen. Cohenour, Sen. Flowers and Sen. Pomnichowski voting no. Sen. Ankney voted by proxy.



**EXECUTIVE ACTION ON SJ 7**

18:46:31 **Motion/Vote:** Sen. Small moved that **SJ 7 DO PASS**. Motion carried 8-4 by roll call vote with Sen. Cohenour, Sen. Flowers, Sen. Lynch and Sen. Pomnichowski voting no. Sen. Ankney voted by proxy.

**EXECUTIVE ACTION ON SB 180**

18:47:24 **Motion:** Sen. Small moved that **SB 180 DO PASS**.

18:47:39 **Motion/Vote:** Sen. Flowers moved that **SB 180 BE AMENDED**. Motion carried unanimously by voice vote. Sen. Ankney voted by proxy.

[EXHIBIT](#)(nas41a27)

18:50:44 **Motion:** Sen. Flowers moved that **SB 180 DO PASS AS AMENDED**.

**Discussion:**

18:50:51 Sen. Flowers  
18:51:43 Sen. Gillespie  
18:52:53 Sen. Lang  
18:56:48 Sen. Jacobson  
18:58:44 Sen. Lynch

19:00:15 **Vote:** Motion carried 7-5 by roll call vote with Sen. Ankney, Sen. Brown, Sen. Hoven, Sen. Lang and Sen. Welborn voting no. Sen. Ankney voted by proxy.

**EXECUTIVE ACTION ON SB 164**

19:01:07 **Motion/Vote:** Sen. Small moved that **SB 164 BE REMOVED FROM TABLE**. Motion carried 7-5 by roll call vote with Sen. Cohenour, Sen. Flowers, Sen. Jacobson, Sen. Lynch and Sen. Pomnichowski voting no. Sen. Ankney voted by proxy.

19:01:59 **Motion:** Sen. Small moved that **SB 164 DO PASS**.

19:02:23 **Motion:** Sen. Small moved that **SB 164 BE AMENDED**.

[EXHIBIT](#)(nas41a28)

**Discussion:**

19:03:01 Sen. Cohenour

19:04:13 **Vote:** Motion carried 7-5 by roll call vote with Sen. Cohenour, Sen. Flowers, Sen. Jacobson, Sen. Lynch and Sen. Pomnichowski voting no. Sen. Ankney voted by proxy.

19:04:57 **Motion/Vote:** Sen. Small moved that **SB 164 DO PASS AS AMENDED**. Motion carried 7-5 by roll call vote with Sen. Cohenour, Sen. Flowers, Sen. Jacobson, Sen. Lynch and Sen. Pomnichowski voting no. Sen. Ankney voted by proxy.

**ADJOURNMENT**

Adjournment: 7:06 PM

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Lauren de Paepe, Secretary

Id

Additional Documents:

**EXHIBIT**([nas41aad.pdf](#))



## **2021 Session**

### **Additional Documents**

**May include the following:**

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**
  - Petitions, Pamphlets, Leaflets, Brochures, Emails, all documents given to Committee Secretary 24 hours after the meeting adjourned.**

**The original exhibit/items are on file at the Montana Historical Society and may be viewed there.**

**BUSINESS REPORT**  
**MONTANA SENATE**  
**67th LEGISLATURE - REGULAR SESSION**  
**SENATE NATURAL RESOURCES COMMITTEE**

**Date:** Friday, February 26, 2021  
**Place:** Capitol

**Time:** 3:20 PM  
**Room:** 303

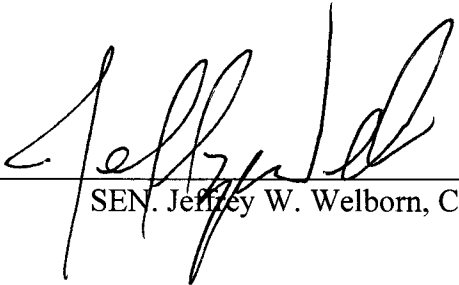
**BILLS and RESOLUTIONS HEARD:**

SB 328 - Revise coal bonding laws - Sen. Duane Ankney (R)  
SJ 7 - Resolution to remove Hidden Pasture Creek from WSA - Sen. Jeffrey Welborn (R)  
SJ 16 - Urge support for Keystone XL pipeline - Sen. Steve Hinebaugh (R)  
SJ 21 - Resolution on Columbia River Treaty - Sen. Mike Cuffe (R)  
SR 81 - Confirm Governor's appointee to the Board of Environmental Review - Sen. Jeffrey Welborn (R)

**EXECUTIVE ACTION TAKEN:**

SB 37 - Be Tabled  
SJ 21 - Do Pass  
SR 81 - Be Adopted  
SB 324 - Be Tabled  
SB 358 - Do Pass  
SB 328 - Do Pass  
SB 352 - Do Pass as Amended  
SJ 16 - Do Pass  
SJ 7 - Do Pass  
SB 180 - Do Pass as Amended  
SB 164 - Do Pass as Amended

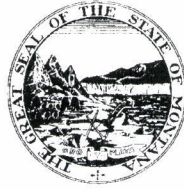
**Comments:**

  
\_\_\_\_\_  
SEN. Jeffrey W. Welborn, Chair

**MONTANA STATE SENATE**  
**Roll Call**  
**NATURAL RESOURCES COMMITTEE**

DATE: 2.26.21

| <u>NAME</u>                           | <u>PRESENT</u> | <u>ABSENT/<br/>EXCUSED</u> |
|---------------------------------------|----------------|----------------------------|
| VICE CHAIR SMALL                      | ✓              |                            |
| VICE CHAIR FLOWERS                    | ✓              |                            |
| SEN. ANKNEY                           |                | ✓                          |
| SEN. BROWN                            | ✓              |                            |
| SEN. COHENOUR                         | ✓              |                            |
| SEN. GILLESPIE                        | ✓              |                            |
| SEN. HOVEN                            | ✓              |                            |
| SEN. JACOBSON                         | ✓              |                            |
| SEN. LANG                             | ✓              |                            |
| SEN. LYNCH <i>entered late</i>        |                | ✓                          |
| SEN. POMNICHOWSKI <i>entered late</i> |                | ✓                          |
| CHAIRMAN WELBORN                      | ✓              |                            |
|                                       |                |                            |
| 12 Committee Members                  |                |                            |
|                                       |                |                            |



## SENATE STANDING COMMITTEE REPORT

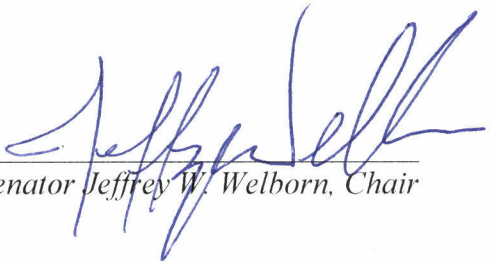
February 26, 2021

Page 1 of 1

Mr. President:

We, your committee on **Natural Resources** report that **Senate Joint Resolution 21** (first reading copy -- white) **do pass**.

Signed: \_\_\_\_\_

  
*Senator Jeffrey W. Welborn, Chair*

- END -

**Committee Vote:**

**Yes 12, No 0**

Fiscal Note Required ☐

SJ0021001SC.slk



## SENATE STANDING COMMITTEE REPORT

February 26, 2021

Page 1 of 1

Mr. President:

We, your committee on **Natural Resources** report that **Senate Resolution 81** (first reading copy -- white) **be adopted**.

Signed: \_\_\_\_\_

*Senator Jeffrey W. Welborn, Chair*

- END -

**Committee Vote:**

**Yes 7, No 5**

Fiscal Note Required ☐

SR0081001SC.slk



## SENATE STANDING COMMITTEE REPORT

February 26, 2021

Page 1 of 1

Mr. President:

We, your committee on **Natural Resources** report that **Senate Bill 358** (first reading copy -- white) **do pass**.

Signed: \_\_\_\_\_

*Senator Jeffrey W. Welborn, Chair*

- END -

**Committee Vote:**

**Yes 9, No 3**

Fiscal Note Required ☐

SB0358001SC.slk





## SENATE STANDING COMMITTEE REPORT

February 26, 2021

Page 1 of 1

Mr. President:

We, your committee on **Natural Resources** report that **Senate Bill 328** (first reading copy -- white) **do pass**.

Signed: \_\_\_\_\_

*Senator Jeffrey W. Welborn, Chair*

- END -

**Committee Vote:**

**Yes 10, No 2**

Fiscal Note Required   X  

SB0328001SC.slk



## SENATE STANDING COMMITTEE REPORT

February 26, 2021

Page 1 of 1

Mr. President:

We, your committee on **Natural Resources** report that **Senate Bill 352** (first reading copy -- white) **do pass as amended.**

Signed: \_\_\_\_\_

*Senator Jeffrey W. Welborn, Chair*

### **And, that such amendments read:**

1. Page 1, line 24.

Following: "~~interest~~"

Strike: "hydrologically connected"

2. Page 4, line 24.

Following: "owns a"

Strike: "hydrologically connected"

- END -

**Committee Vote:**

**Yes 7, No 5**

Fiscal Note Required ☐

SB0352001SC.slk



## SENATE STANDING COMMITTEE REPORT

February 26, 2021

Page 1 of 1

Mr. President:

We, your committee on **Natural Resources** report that **Senate Joint Resolution 16** (first reading copy -- white) **do pass**.

Signed: \_\_\_\_\_

  
Senator Jeffrey W. Welborn, Chair

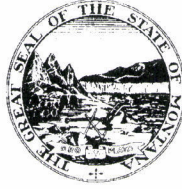
- END -

**Committee Vote:**

**Yes 9, No 3**

Fiscal Note Required \_\_\_\_

SJ0016001SC.slk



## SENATE STANDING COMMITTEE REPORT

February 26, 2021

Page 1 of 1

Mr. President:

We, your committee on **Natural Resources** report that **Senate Joint Resolution 7** (first reading copy -- white) **do pass**.

Signed: \_\_\_\_\_

*Senator Jeffrey W. Welborn, Chair*

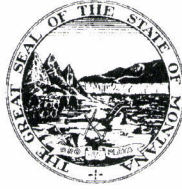
- END -

**Committee Vote:**

**Yes 8, No 4**

Fiscal Note Required ☐

SJ0007001SC.slk



## SENATE STANDING COMMITTEE REPORT

February 26, 2021

Page 1 of 1

Mr. President:

We, your committee on **Natural Resources** report that **Senate Bill 180** (first reading copy -- white) **do pass as amended.**

Signed: \_\_\_\_\_

*Senator Jeffrey W. Welborn, Chair*

### **And, that such amendments read:**

1. Page 2, line 8.

Following: "chair."

Insert: "Subcommittee members must have expertise in soil health and represent a diversity of livestock and cropping systems and geographic regions of the state."

2. Page 2, line 17.

Following: "districts"

Insert: ", who shall serve as presiding officer"

3. Page 2, line 18.

Following: "on behalf of"

Strike: "small-sized to mid-sized"

4. Page 3, line 11.

Following: "up"

Insert: "voluntary"

5. Page 3, line 19.

Following: "adoption of"

Insert: "voluntary"

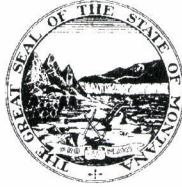
- END -

### **Committee Vote:**

**Yes 7, No 5**

Fiscal Note Required X

SB0180002SC.slk



## SENATE STANDING COMMITTEE REPORT

February 26, 2021

Page 1 of 1

Mr. President:

We, your committee on **Natural Resources** report that **Senate Bill 164** (first reading copy -- white) **do pass as amended.**

Signed: \_\_\_\_\_

*Senator Jeffrey W. Welborn, Chair*

### **And, that such amendments read:**

1. Page 3, line 5.

Following: "sources"

Insert: ", except that for subdivisions with more than 25 lots, a local county commission may reduce the limit to 7.5 milligrams per liter from all sources"

- END -

**Committee Vote:**

**Yes 7, No 5**

Fiscal Note Required ☐

SB0164001SC.slk

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COMMITTEE FILE COPY

## BILL TABLED NOTICE

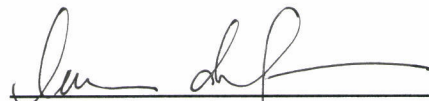
### SENATE NATURAL RESOURCES COMMITTEE

The **SENATE NATURAL RESOURCES COMMITTEE** TABLED

**SB 37 - Permit exemption for Berkeley Pit water - Sen. Jeffrey Welborn (R)**

**SB 324 - Repeal administrative rules related to selenium - Sen. Mike Cuffe (R)**

by motion, on **Friday, February 26, 2021** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).

  
(For the Committee)

  
(For the Secretary of the Senate)  
6:30 am / 2/27  
(Time) (Date)

February 26, 2021 (7:43pm)

Lauren de Paepe, Secretary

Phone: 444-4618

**MONTANA STATE SENATE**  
**Roll Call Vote**  
**NATURAL RESOURCES COMMITTEE**

DATE 2.26.21 BILL NO. SR 81 MOTION NO. \_\_\_\_\_  
MOTION: Be adopted

| <u>NAME</u>          | AYE | NO | Proxy |
|----------------------|-----|----|-------|
| VICE CHAIR SMALL     | ✓   |    |       |
| VICE CHAIR FLOWERS   |     | ✓  |       |
| SEN. ANKNEY          | ✓   |    | ✓     |
| SEN. BROWN           | ✓   |    |       |
| SEN. COHENOUR        |     | ✓  |       |
| SEN. GILLESPIE       | ✓   |    |       |
| SEN. HOVEN           | ✓   |    |       |
| SEN. JACOBSON        |     | ✓  |       |
| SEN. LANG            | ✓   |    |       |
| SEN. LYNCH           |     | ✓  |       |
| SEN. POMNICHOWSKI    |     | ✓  |       |
| CHAIRMAN WELBORN     | ✓   |    |       |
|                      |     |    |       |
| 12 COMMITTEE MEMBERS | 7   | 5  |       |



**MONTANA STATE SENATE**  
**Roll Call Vote**  
**NATURAL RESOURCES COMMITTEE**

DATE 2.26.21 BILL NO 88324 MOTION NO. \_\_\_\_\_  
MOTION: \_\_\_\_\_

be amended

| <u>NAME</u>          | AYE | NO | Proxy |
|----------------------|-----|----|-------|
| VICE CHAIR SMALL     | ✓   |    |       |
| VICE CHAIR FLOWERS   |     | ✓  |       |
| SEN. ANKNEY          | ✓   |    | ✓     |
| SEN. BROWN           | ✓   |    |       |
| SEN. COHENOUR        |     | ✓  |       |
| SEN. GILLESPIE       | ✓   |    |       |
| SEN. HOVEN           | ✓   |    |       |
| SEN. JACOBSON        |     | ✓  |       |
| SEN. LANG            | ✓   |    |       |
| SEN. LYNCH           |     | ✓  |       |
| SEN. POMNICHOWSKI    |     | ✓  |       |
| CHAIRMAN WELBORN     | ✓   |    |       |
|                      |     |    |       |
| 12 COMMITTEE MEMBERS | 7   | 5  |       |

**MONTANA STATE SENATE**  
**Roll Call Vote**  
**NATURAL RESOURCES COMMITTEE**

DATE 2-26-21 BILL NO SB324 MOTION NO. \_\_\_\_\_  
MOTION: do pass as amended

| <u>NAME</u>          | AYE | NO | Proxy |
|----------------------|-----|----|-------|
| VICE CHAIR SMALL     | ✓   |    |       |
| VICE CHAIR FLOWERS   |     | ✓  |       |
| SEN. ANKNEY          |     | ✓  | ✓     |
| SEN. BROWN           | ✓   |    |       |
| SEN. COHENOUR        |     | ✓  |       |
| SEN. GILLESPIE       | ✓   |    |       |
| SEN. HOVEN           | ✓   |    |       |
| SEN. JACOBSON        |     | ✓  |       |
| SEN. LANG            | ✓   |    |       |
| SEN. LYNCH           |     | ✓  |       |
| SEN. POMNICHOWSKI    |     | ✓  |       |
| CHAIRMAN WELBORN     |     | ✓  |       |
|                      |     |    |       |
| 12 COMMITTEE MEMBERS | 5   | 7  |       |

**MONTANA STATE SENATE**  
**Roll Call Vote**  
**NATURAL RESOURCES COMMITTEE**

DATE 2-26-21 BILL NO SB324 MOTION NO. \_\_\_\_\_  
MOTION: be tabled

| <u>NAME</u>          | AYE | NO | Proxy |
|----------------------|-----|----|-------|
| VICE CHAIR SMALL     | ✓   |    |       |
| VICE CHAIR FLOWERS   | ✓   |    |       |
| SEN. ANKNEY          | ✓   |    | ✓     |
| SEN. BROWN           | ✓   |    |       |
| SEN. COHENOUR        | ✓   |    |       |
| SEN. GILLESPIE       | ✓   |    |       |
| SEN. HOVEN           | ✓   |    |       |
| SEN. JACOBSON        | ✓   |    |       |
| SEN. LANG            | ✓   |    |       |
| SEN. LYNCH           | ✓   |    |       |
| SEN. POMNICHOWSKI    | ✓   |    |       |
| CHAIRMAN WELBORN     | ✓   |    |       |
|                      |     |    |       |
| 12 COMMITTEE MEMBERS | 12  | 0  |       |

**MONTANA STATE SENATE**  
**Roll Call Vote**  
**NATURAL RESOURCES COMMITTEE**

DATE 2.26.21 BILL NO SB 358 MOTION NO. \_\_\_\_\_  
MOTION: be removed from the table

| <u>NAME</u>          | AYE | NO | Proxy |
|----------------------|-----|----|-------|
| VICE CHAIR SMALL     | ✓   |    |       |
| VICE CHAIR FLOWERS   |     | ✓  |       |
| SEN. ANKNEY          | ✓   |    | ✓     |
| SEN. BROWN           | ✓   |    |       |
| SEN. COHENOUR        |     | ✓  |       |
| SEN. GILLESPIE       | ✓   |    |       |
| SEN. HOVEN           | ✓   |    |       |
| SEN. JACOBSON        | ✓   |    |       |
| SEN. LANG            | ✓   |    |       |
| SEN. LYNCH           | ✓   |    |       |
| SEN. POMNICHOWSKI    |     | ✓  |       |
| CHAIRMAN WELBORN     | ✓   |    |       |
|                      |     |    |       |
| 12 COMMITTEE MEMBERS | 9   | 3  |       |

**MONTANA STATE SENATE**  
**Roll Call Vote**  
**NATURAL RESOURCES COMMITTEE**

DATE 2-26-21 BILL NO SB358 MOTION NO. \_\_\_\_\_

MOTION: Do pass

| <u>NAME</u>          | AYE | NO | Proxy |
|----------------------|-----|----|-------|
| VICE CHAIR SMALL     | ✓   |    |       |
| VICE CHAIR FLOWERS   |     | ✓  |       |
| SEN. ANKNEY          | ✓   |    | ✓     |
| SEN. BROWN           | ✓   |    |       |
| SEN. COHENOUR        |     | ✓  |       |
| SEN. GILLESPIE       | ✓   |    |       |
| SEN. HOVEN           | ✓   |    |       |
| SEN. JACOBSON        | ✓   |    |       |
| SEN. LANG            | ✓   |    |       |
| SEN. LYNCH           | ✓   |    |       |
| SEN. POMNICHOWSKI    |     | ✓  |       |
| CHAIRMAN WELBORN     | ✓   |    |       |
|                      |     |    |       |
| 12 COMMITTEE MEMBERS | 9   | 3  |       |

**MONTANA STATE SENATE**  
**Roll Call Vote**  
**NATURAL RESOURCES COMMITTEE**

DATE 2-26-21 BILL NO SB828 MOTION NO. \_\_\_\_\_  
MOTION: Do pass

| <u>NAME</u>          | AYE | NO | Proxy |
|----------------------|-----|----|-------|
| VICE CHAIR SMALL     | ✓   |    |       |
| VICE CHAIR FLOWERS   | ✓   |    |       |
| SEN. ANKNEY          | ✓   |    | ✓     |
| SEN. BROWN           | ✓   |    |       |
| SEN. COHENOUR        |     | ✓  |       |
| SEN. GILLESPIE       | ✓   |    |       |
| SEN. HOVEN           | ✓   |    |       |
| SEN. JACOBSON        | ✓   |    |       |
| SEN. LANG            | ✓   |    |       |
| SEN. LYNCH           | ✓   |    |       |
| SEN. POMNICHOWSKI    |     | ✓  |       |
| CHAIRMAN WELBORN     | ✓   |    |       |
|                      |     |    |       |
| 12 COMMITTEE MEMBERS | 10  | 2  |       |

**MONTANA STATE SENATE**  
**Roll Call Vote**  
**NATURAL RESOURCES COMMITTEE**

DATE 2-26-21 BILL NO SB 352 MOTION NO. \_\_\_\_\_

MOTION: Be amended with SB 352.1.2.

| <u>NAME</u>          | AYE | NO | Proxy |
|----------------------|-----|----|-------|
| VICE CHAIR SMALL     |     | ✓  |       |
| VICE CHAIR FLOWERS   | ✓   |    |       |
| SEN. ANKNEY          |     | ✓  | ✓     |
| SEN. BROWN           |     | ✓  |       |
| SEN. COHENOUR        | ✓   |    |       |
| SEN. GILLESPIE       |     | ✓  |       |
| SEN. HOVEN           |     | ✓  |       |
| SEN. JACOBSON        | ✓   |    |       |
| SEN. LANG            |     | ✓  |       |
| SEN. LYNCH           | ✓   |    |       |
| SEN. POMNICHOWSKI    | ✓   |    |       |
| CHAIRMAN WELBORN     | ✓   |    |       |
|                      |     |    |       |
| 12 COMMITTEE MEMBERS | 6   | 6  |       |

**MONTANA STATE SENATE**  
**Roll Call Vote**  
**NATURAL RESOURCES COMMITTEE**

DATE 2-26-21 BILL NO SB 352 MOTION NO. \_\_\_\_\_

MOTION: Do pass as amended

| <u>NAME</u>          | AYE | NO | Proxy |
|----------------------|-----|----|-------|
| VICE CHAIR SMALL     | ✓   |    |       |
| VICE CHAIR FLOWERS   |     | ✓  |       |
| SEN. ANKNEY          | ✓   |    | ✓     |
| SEN. BROWN           | ✓   |    |       |
| SEN. COHENOUR        |     | ✓  |       |
| SEN. GILLESPIE       | ✓   |    |       |
| SEN. HOVEN           | ✓   |    |       |
| SEN. JACOBSON        |     | ✓  |       |
| SEN. LANG            | ✓   |    |       |
| SEN. LYNCH           |     | ✓  |       |
| SEN. POMNICHOWSKI    |     | ✓  |       |
| CHAIRMAN WELBORN     | ✓   |    |       |
|                      |     |    |       |
| 12 COMMITTEE MEMBERS | 7   | 5  |       |



**MONTANA STATE SENATE**  
**Roll Call Vote**  
**NATURAL RESOURCES COMMITTEE**

DATE 2-26-21 BILL NO SJ16 MOTION NO. \_\_\_\_\_  
MOTION: Be amended

| <u>NAME</u>          | AYE | NO | Proxy |
|----------------------|-----|----|-------|
| VICE CHAIR SMALL     |     | ✓  |       |
| VICE CHAIR FLOWERS   |     | ✓  |       |
| SEN. ANKNEY          |     | ✓  | ✓     |
| SEN. BROWN           | ✓   |    |       |
| SEN. COHENOUR        |     | ✓  |       |
| SEN. GILLESPIE       | ✓   |    |       |
| SEN. HOVEN           | ✓   |    |       |
| SEN. JACOBSON        |     | ✓  |       |
| SEN. LANG            | ✓   |    |       |
| SEN. LYNCH           |     | ✓  |       |
| SEN. POMNICHOWSKI    |     | ✓  |       |
| CHAIRMAN WELBORN     |     | ✓  |       |
|                      |     |    |       |
| 12 COMMITTEE MEMBERS | 4   | 8  |       |

**MONTANA STATE SENATE**  
**Roll Call Vote**  
**NATURAL RESOURCES COMMITTEE**

DATE 2-26-21 BILL NO SB 16 MOTION NO. \_\_\_\_\_

MOTION: Do pass

| <u>NAME</u>          | AYE | NO | Proxy |
|----------------------|-----|----|-------|
| VICE CHAIR SMALL     | ✓   |    |       |
| VICE CHAIR FLOWERS   |     | ✓  |       |
| SEN. ANKNEY          | ✓   |    | ✓     |
| SEN. BROWN           | ✓   |    |       |
| SEN. COHENOUR        |     | ✓  |       |
| SEN. GILLESPIE       | ✓   |    |       |
| SEN. HOVEN           | ✓   |    |       |
| SEN. JACOBSON        | ✓   |    |       |
| SEN. LANG            | ✓   |    |       |
| SEN. LYNCH           | ✓   |    |       |
| SEN. POMNICHOWSKI    |     | ✓  |       |
| CHAIRMAN WELBORN     | ✓   |    |       |
|                      |     |    |       |
| 12 COMMITTEE MEMBERS | 9   | 3  |       |

**MONTANA STATE SENATE**  
**Roll Call Vote**  
**NATURAL RESOURCES COMMITTEE**

DATE 2-26-21 BILL NO SJ 7 MOTION NO. \_\_\_\_\_  
MOTION: \_\_\_\_\_

Do pass

| <u>NAME</u>          | AYE | NO | Proxy |
|----------------------|-----|----|-------|
| VICE CHAIR SMALL     | ✓   |    |       |
| VICE CHAIR FLOWERS   |     | ✓  |       |
| SEN. ANKNEY          | ✓   |    | ✓     |
| SEN. BROWN           | ✓   |    |       |
| SEN. COHENOUR        |     | ✓  |       |
| SEN. GILLESPIE       | ✓   |    |       |
| SEN. HOVEN           | ✓   |    |       |
| SEN. JACOBSON        | ✓   |    |       |
| SEN. LANG            | ✓   |    |       |
| SEN. LYNCH           |     | ✓  |       |
| SEN. POMNICHOWSKI    |     | ✓  |       |
| CHAIRMAN WELBORN     | ✓   |    |       |
|                      |     |    |       |
| 12 COMMITTEE MEMBERS | 8   | 4  |       |

**MONTANA STATE SENATE**  
**Roll Call Vote**  
**NATURAL RESOURCES COMMITTEE**

DATE 2-26-21 BILL NO SB180 MOTION NO. \_\_\_\_\_

MOTION: Do pass as amended

| <u>NAME</u>          | AYE | NO | Proxy |
|----------------------|-----|----|-------|
| VICE CHAIR SMALL     | ✓   |    |       |
| VICE CHAIR FLOWERS   | ✓   |    |       |
| SEN. ANKNEY          |     | ✓  | ✓     |
| SEN. BROWN           |     | ✓  |       |
| SEN. COHENOUR        | ✓   |    |       |
| SEN. GILLESPIE       | ✓   |    |       |
| SEN. HOVEN           |     | ✓  |       |
| SEN. JACOBSON        | ✓   |    |       |
| SEN. LANG            |     | ✓  |       |
| SEN. LYNCH           | ✓   |    |       |
| SEN. POMNICHOWSKI    | ✓   |    |       |
| CHAIRMAN WELBORN     |     | ✓  |       |
|                      |     |    |       |
| 12 COMMITTEE MEMBERS | 7   | 5  |       |

**MONTANA STATE SENATE**  
**Roll Call Vote**  
**NATURAL RESOURCES COMMITTEE**

DATE 2-26-21 BILL NO SB164 MOTION NO. \_\_\_\_\_  
MOTION: remove from the table

| <u>NAME</u>          | AYE | NO | Proxy |
|----------------------|-----|----|-------|
| VICE CHAIR SMALL     | ✓   |    |       |
| VICE CHAIR FLOWERS   |     | ✓  |       |
| SEN. ANKNEY          | ✓   |    | ✓     |
| SEN. BROWN           | ✓   |    |       |
| SEN. COHENOUR        |     | ✓  |       |
| SEN. GILLESPIE       | ✓   |    |       |
| SEN. HOVEN           | ✓   |    |       |
| SEN. JACOBSON        |     | ✓  |       |
| SEN. LANG            | ✓   |    |       |
| SEN. LYNCH           |     | ✓  |       |
| SEN. POMNICHOWSKI    |     | ✓  |       |
| CHAIRMAN WELBORN     | ✓   |    |       |
|                      |     |    |       |
| 12 COMMITTEE MEMBERS | 7   | 5  |       |

**MONTANA STATE SENATE**  
**Roll Call Vote**  
**NATURAL RESOURCES COMMITTEE**

DATE 2-26-21 BILL NO SB164 MOTION NO. \_\_\_\_\_

MOTION: Be ~~amendment~~ amended

| <u>NAME</u>          | AYE | NO | Proxy |
|----------------------|-----|----|-------|
| VICE CHAIR SMALL     | ✓   |    |       |
| VICE CHAIR FLOWERS   |     | ✓  |       |
| SEN. ANKNEY          | ✓   |    | ✓     |
| SEN. BROWN           | ✓   |    |       |
| SEN. COHENOUR        |     | ✓  |       |
| SEN. GILLESPIE       | ✓   |    |       |
| SEN. HOVEN           | ✓   |    |       |
| SEN. JACOBSON        |     | ✓  |       |
| SEN. LANG            | ✓   |    |       |
| SEN. LYNCH           |     | ✓  |       |
| SEN. POMNICHOWSKI    |     | ✓  |       |
| CHAIRMAN WELBORN     | ✓   |    |       |
|                      |     |    |       |
| 12 COMMITTEE MEMBERS | 7   | 5  |       |

**MONTANA STATE SENATE**  
**Roll Call Vote**  
**NATURAL RESOURCES COMMITTEE**

DATE 2-26-21 BILL NO SB164 MOTION NO. \_\_\_\_\_  
MOTION: Do pass as amended

| <u>NAME</u>          | AYE | NO | Proxy |
|----------------------|-----|----|-------|
| VICE CHAIR SMALL     | ✓   |    |       |
| VICE CHAIR FLOWERS   |     | ✓  |       |
| SEN. ANKNEY          | ✓   |    | ✓     |
| SEN. BROWN           | ✓   |    |       |
| SEN. COHENOUR        |     | ✓  |       |
| SEN. GILLESPIE       | ✓   |    |       |
| SEN. HOVEN           | ✓   |    |       |
| SEN. JACOBSON        |     | ✓  |       |
| SEN. LANG            | ✓   |    |       |
| SEN. LYNCH           |     | ✓  |       |
| SEN. POMNICHOWSKI    |     | ✓  |       |
| CHAIRMAN WELBORN     | ✓   |    |       |
|                      |     |    |       |
| 12 COMMITTEE MEMBERS | 7   | 5  |       |

# SENATE PROXY

I, Senator Arkney, hereby authorize Senator Small to vote my proxy before the Senate Natural Resources meeting held on 2/26/2021, 2021.

[Signature]  
Senator Signature

2/26/2021  
Date

Said authorization is as follows: (mark only one)

- ☐ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

| Bill No./Amendment No.    | Aye | No |
|---------------------------|-----|----|
| SJ 21 Bill                | X   |    |
| SR 81 Bill                | X   |    |
| Amend 324 1.1             | X   |    |
| SB 324 Bill               |     | X  |
| 324 Table                 | X   |    |
| SB 358 from Table         | X   |    |
| Due Pass SB 358           | X   |    |
| SB 328 Bill               | X   |    |
| Amend 352 1.1             | X   |    |
| Amend 352 1.2             |     | X  |
| SB 352 Bill               | X   |    |
| Amend SJ 16 1.1           |     | X  |
| SJ 16 <del>1.1</del> Bill | X   |    |
| SJ 7                      | X   |    |
| SB 180                    |     | X  |
| Amend 180 1.2             | X   |    |



# SENATE PROXY

I, Senator Ankney, hereby authorize Senator Jason Small to vote my proxy before the Senate Natural Resources meeting held on 2/26/, 2021.

  
\_\_\_\_\_  
Senator Signature

2 26 2021  
Date

Continued

Said authorization is as follows: *(mark only one)*

- ☐ All votes, including amendments.
- ☐ All votes as directed below on the listed bills, and all other votes.
- ☐ Votes only as directed below.

[illegible]

#1

## SR 81 - Confirm Governor's appointee to the Board of Environmental Review

N

[illegible]

#2

## SJ 7 - Resolution to remove Hidden Pasture Creek from WSA

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**



**MONTANA STATE SENATE**  
**Visitors Register**  
**SENATE NATURAL RESOURCES COMMITTEE**

Sponsor: **Sen. Duane Ankney (R)**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**



#5

## SJ 21 - Resolution on Columbia River Treaty

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

**Public Comment Requests**  
**Senate Natural Resources**  
**Meeting Date: 02/26/2021 Meeting Time: 3:00 pm**

| Bill  | Position   | Name          | Affiliation                    | Location       | Email                       |
|-------|------------|---------------|--------------------------------|----------------|-----------------------------|
| SR-81 | Proponents | Julia Altemus | Not provided                   | Missoula       | juliaa296@gmail.com         |
|       |            | Paul McKenzie | F.H. Stoltze Land & Lumber Co. | Columbia Falls | pmckenzie@stoltzelumber.com |

| Bill   | Position                | Name            | Affiliation                         | Location | Email                        |
|--------|-------------------------|-----------------|-------------------------------------|----------|------------------------------|
| SB-328 | Proponents              | Jesse Noel      | Not provided                        | Billings | jnoel@westmoreland.com       |
|        | Opponents               | Stephen Charter | Northern Plains Resource Council    | Shepherd | stephenowencharter@gmail.com |
|        |                         | Dorf Johnson    | MT Environmental Information Center | Helena   | djohnson@meic.org            |
|        | Informational Witnesses | Robert Smith    | MT Dept. of Environmental Quality   | Helena   | rsmith2@mt.gov               |
|        |                         | Edward Coleman  | MT Dept. of Environmental Quality   | Helena   | ecoleman@mt.gov              |

| Bill | Position   | Name                 | Affiliation                      | Location   | Email                      |
|------|------------|----------------------|----------------------------------|------------|----------------------------|
| SJ-7 | Proponents | Byron Martinell      | Beaverhead Conservation District | Dell       | byronmartinell@hotmail.com |
|      |            | Jeffrey Johnson      | Not provided                     | Dell       | videocows@hotmail.com      |
|      | Opponents  | Mike E Wilkinson     | Not provided                     | Wise River | wilkinson1954@hotmail.com  |
|      |            | Oliver Alan Weltzien | Not provided                     | Dillon     | alanweltzien@gmail.com     |

| Bill  | Position  | Name                        | Affiliation                                  | Location     | Email                            |
|-------|-----------|-----------------------------|----------------------------------------------|--------------|----------------------------------|
| SJ-16 | Opponents | Dalayah Killback            | Western Native Voice                         | Helena       | dkillback@westernnativevoice.org |
|       |           | Laurie Little Dog           | Not provided                                 | Bozeman      | LaurieLittleDog@gmail.com        |
|       |           | Cari Kimball                | MT Environmental Information Center          | Helena       | ckimball@meic.org                |
|       |           | Josh Butterfly              | Opening Doors                                | Great Falls  | butterflyjosh4@gmail.com         |
|       |           | President Andrew Werk JR    | Fort Belknap Indian Community Council        | Hays         | andy.werk@ftbelknap.org          |
|       |           | Brandi King                 | Not provided                                 | Fort Belknap | brandiking5050@gmail.com         |
|       |           | Clemente Arciga             | Not provided                                 | Missoula     | clementearciga@aol.com           |
|       |           | Alvin "Jim" Kennedy         | Not provided                                 | Fort Belknap | ajkennedy406@gmail.com           |
|       |           | Warren D. Morin             | Fort Belknap Indian Community Council member | Hays         | wmorin@ftbelknap.org             |
|       |           | Councilman Dominic Messerly | Fort Belknap Indian Community Council        | Fort Belknap | dominic.messerly@ftbelknap.org   |
|       |           | Carmen Borchelt             | Montana Audubon                              | Helena       | carmen@mtaudubon.org             |
|       |           | Colette Werk                | Environmental Dept Fort Belknap              | Hays         | Colette.werk@ftbelknap.org       |
|       |           | Marcos Bullchild            | Opening Doors                                | Great Falls  | bullchildmarcos333@gmail.com     |



MONTANA  
SMART GROWTH  
COALITION

To: Senate Natural Resources, Jeffrey Welborn, Chair  
For: Feb. 17, 2021 Hearing

Date: 2-26-21

Bill No. SB 180

Bill Type - Number: **SB 180**

Short Title: Establish an interim committee on soil health

Primary Sponsor: Pat Flowers (D) SD 32

**The Montana Smart Growth Coalition** works to ensure that development is conducted in concert with protection of our land, air, and water. SB 180 establishes a subcommittee under the environmental quality council that is empowered to study soil health in Montana and make relevant recommendations.

We support SB 180 for the following reasons:

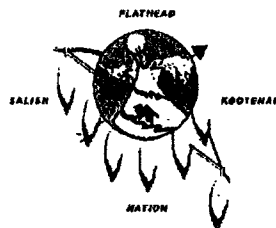
- **SB 180 recognizes that improving the health of our soils is directly tied to the health of our state's economy as agricultural remains the lead industry in Montana's economy.** By creating a committee that recommends soil health strategies, SB 180 will provide Montana farmers and the agencies who support them the current information they need to make smart decisions that will benefit Montana agriculture and the state economy.
- **Improving soil health is beneficial for Montana farmers and ranchers as well for the environment.** As noted in the bill, Montana loses large acreage of quality topsoil to soil erosion every year. Improved planning and management can help mitigate those losses and better protect productive farmland as well as the state's rivers and streams.
- **Healthy soils hold more water, provide more resilience against drought, require fewer pesticides and nutrients, and generally improve crop yields.** Healthy soil practices such as cover crops also provide valuable wildlife habitat and have a variety of positive effects on local ecosystems.
- **SB 180** takes an important step towards better statewide soil health practices. We urge you to support this bill.



*Founded in 1999, the Montana Smart Growth Coalition works to help Montana communities grow smart. We are a coalition of conservation and smart growth minded organizations, businesses, and individuals representing communities across the state. Our goal is to ensure that development patterns maintain viable working landscapes, protect our clean water and wildlife habitat, and enhance Montana's unique quality of life and small towns. We work on the local and state level to secure policies to achieve these goals.*

◆ The Montana Smart Growth Coalition ◆ 406-755-4521 or 406-253-0872 ◆ [MayreFlowers@MontanaSky.net](mailto:MayreFlowers@MontanaSky.net)





A Confederation of the Salish,  
Pend d' Oreille  
and Kootenai Tribes

THE CONFEDERATED SALISH AND KOOTENAI TRIBES  
OF THE FLATHEAD NATION

P.O. BOX 278  
Pablo, Montana 59855  
(406) 275-2700  
FAX (406) 275-2806  
www.cskt.org



A People of Vision

**TRIBAL COUNCIL MEMBERS:**

Shelly R. Fyant - Chairwoman  
Anita L. Matt - Vice Chair  
Ellie Bundy McLeod - Secretary  
Martin Charlo - Treasurer  
Len Two Teeth  
D. Fred Matt  
Carole Lankford  
James "Bing" Matt  
Charmel R. Gillin  
Mike Dolson

February 23, 2021

Montana Senate Natural Resources Committee  
Montana State Legislature  
State Capitol, PO Box 201706  
Helena, MT 59620-1706  
*Hand Delivered*

**Re: CSKT Letter Opposing Repeal the Selenium Criteria for Lake Koocanusa and the Kootenai River (Senate Bill 324/Draft #3122)**

Dear Senate Natural Resources Committee,

The Confederated Salish and Kootenai Tribes (CSKT) strongly urge the Montana Legislature - and all its Committees - to oppose and vote no on any effort to repeal or alter the site specific criteria that was approved by the Montana DEQ and BER for selenium (0.8 ug/l) for Lake Koocanusa (Senate Bill 324/Draft #3122).

We are very concerned about mining impacts to water quality, fish, wildlife, and traditional cultural uses by CSKT members and non-members alike (and other tribal interests on both sides of the US-Canada border). The Tribes depend on these waters for our cultural and subsistence practices - as we have since time immemorial.

The DEQ's site specific criteria process for selenium in Koocanusa has lasted more than 5-years and involved the Province of BC, CSKT, Kootenai Tribe of Idaho, the Ktunaxa Nation in BC, MT Fish and Game, DEQ, the USGS and many other US federal agencies, and the public. The process also included the greatest selenium expertise available. Characterizations, such as that the process was rushed or flawed<sup>1</sup> are patently contrary to the documented history of DEQ's extensive and complete five-year process with extensive multi-governmental, scientific, public, and other participants.

---

<sup>1</sup> If something was rushed regarding selenium in Koocanusa, it is that the legislative hearing for this bill appears to have been posted on a Saturday, only to close sign-ups for remote testimony the next day.

Selenium contamination in Lake Koocanusa is clearly and scientifically tied to coal mines in the Elk River watershed of British Columbia (it has been demonstrated that it is not “background” and not from US/Montana sources). We have years of data for the Elk River and Lake Koocanusa definitively demonstrating that selenium and nitrates from the Canadian mines are degrading - in Montana - water quality, fish, and all life that depends on those waters.

British Columbia - and the companies involved - have failed to adequately respond (in spite much rhetoric, lobbying, seemingly ever-changing plans to fix things, and money). Despite British Columbia’s 2013 Ministerial Order No. M113 recognizing that evidence of “increasing concentrations of contaminants, such as selenium..., in water and/or biota, which may exceed provincial Water Quality Guidelines, may be causing impairment of ecosystem health” and requiring the mining companies to “*stabilize and reverse* increasing trends in water contaminant concentrations”, selenium inputs from the Elk Valley mines into Koocanusa Reservoir and the Kootenai River continue to demonstrate a clear, increasing trend.

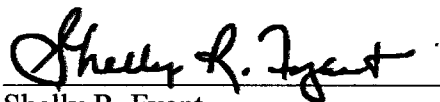
Further, Teck Coal has applied to ‘expand’ the largest coal mine in the Elk Valley, the Fording River Castle Project, which would create the largest coal mine in British Columbia. This mine is currently working its way through the environmental process, without essential cohesive, transparent, multi-governmental review that includes in a meaningful way our governments. Likewise, three additional non-Teck Coal mines are also proposed in the Elk Valley, adjacent to existing mines. Impacts and threats of future impacts are increasing - not decreasing.

The DEQ’s site specific criteria for selenium in Lake Koocanusa is more important than ever.

For these and other reasons, I urge the Committee to reject the proposed bill and leave in-place the Montana DEQ’s adoption of the 0.8 ug/l criteria for selenium for Lake Koocanusa. The DEQ’s process represents over five years of scientifically supportable, public, engaged, and detailed processes. To reverse this goes against not only Montana’s natural resources and economic interests - it would be a travesty.

Thank you for considering our comments. Please contact me if you want additional information, testimony, or I can further assist your deliberations.

Sincerely,



Shelly R. Fyant  
Tribal Council Chairwoman  
Confederated Salish and Kootenai Tribes

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 67th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** Chair Steve Gunderson, on March 29, 2021 at 3:00 PM, in Room 172  
Capitol

#### **ROLL CALL**

**Members Present:**

Rep. Steve Gunderson, Chair (R)  
Rep. Willis Curdy, Vice Chair (D)  
Rep. Rhonda Knudsen, Vice Chair (R)  
Rep. Paul Fielder (R)  
Rep. Ross H. Fitzgerald (R)  
Rep. Tom France (D)  
Rep. Steven Galloway (R)  
Rep. Steve Gist (R)  
Rep. Marty Malone (R)  
Rep. Brian Putnam (R)  
Rep. Kenneth Walsh (R)  
Rep. Marvin Weatherwax (D)

**Members Excused:**

Rep. Robert Farris-Olsen (D)  
Rep. Marilyn Marler (D)  
Rep. Mark Noland (R)

**Members Absent:** None

**Staff Present:**

Jacquelynn Bomgardner, Committee Secretary  
Joe Kolman, Legislative Branch  
Rachael Foe, Remote Meeting Coordinator

**Audio Committees:** These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

**Committee Business Summary:**

Hearing & Date Posted: HB 648, 3/24/2021; SB 358, 3/12/2021  
Executive Action on: SB 29; SB 40; SB 136; SB 165; SB 233; SB 249; SB 328; SB 348;  
SB 352

14:45:26 Chair Gunderson  
14:45:47 Recess  
15:15:45 Reconvened

**EXECUTIVE ACTION ON SB 29**

15:16:23 **Motion:** Rep. R. Knudsen moved that **SB 29 BE CONCURRED IN.**

**Discussion:**

15:16:33 Joe Kolman, Legislative Services Division (LSD)

15:17:20 **Motion/Vote:** Rep. Fitzgerald moved that **SB 29 BE AMENDED.** Motion carried unanimously by voice vote. Rep. Marler and Rep. Noland voted by proxy.

**EXHIBIT**(nah61a01)

15:18:44 Rep. Farris-Olsen joined the meeting.

15:19:22 **Motion:** Rep. R. Knudsen moved that **SB 29 BE CONCURRED IN AS AMENDED.**

**Discussion:**

15:19:38 Rep. Putnam

15:20:00 **Substitute Motion/Vote:** Rep. R. Knudsen made a substitute motion that **SB 29 BE TABLED.** Substitute Motion carried 10-5 by roll call vote with Rep. Fitzgerald, Rep. France, Rep. Gunderson, Rep. Putnam and Rep. Walsh voting no. Rep. Marler and Rep. Noland voted by proxy.

**EXECUTIVE ACTION ON SB 40**

15:21:35 **Motion/Vote:** Rep. R. Knudsen moved that **SB 40 BE CONCURRED IN.** Motion carried unanimously by voice vote. Rep. Marler and Rep. Noland voted by proxy. Rep. Curdy will carry the bill.

**EXECUTIVE ACTION ON SB 136**

15:22:48 **Motion/Vote:** Rep. R. Knudsen moved that **SB 136 BE CONCURRED IN.** Motion carried unanimously by voice vote. Rep. Marler and Rep. Noland voted by proxy. Rep. Galloway will carry the bill.

**EXECUTIVE ACTION ON SB 165**

15:24:27 **Motion:** Rep. R. Knudsen moved that **SB 165 BE CONCURRED IN.**

**Discussion:**

15:24:42 Vice Chair R. Knudsen  
15:25:39 Joe Kolman, LSD  
15:28:54 Chair Gunderson

15:29:10 **Motion:** Rep. R. Knudsen moved that **SB 165 BE AMENDED.**  
[EXHIBIT](#)(nah61a02)

**Discussion:**

15:29:39 Rep. Putnam

15:30:11 **Vote:** Motion carried 14-1 by voice vote with Rep. France voting no. Rep. Marler and Rep. Noland voted by proxy.

15:30:41 **Motion:** Rep. R. Knudsen moved that **SB 165 BE AMENDED.**  
[EXHIBIT](#)(nah61a03)

**Discussion:**

15:30:55 Rep. Walsh

15:31:19 **Vote:** Motion carried unanimously by voice vote. Rep. Marler and Rep. Noland voted by proxy.

15:31:39 **Motion:** Rep. R. Knudsen moved that **SB 165 BE CONCURRED IN AS AMENDED.**

15:31:53 **Substitute Motion/Vote:** Rep. Putnam made a substitute motion that **SB 165 BE TABLED.** Substitute Motion carried 8-7 by roll call vote with Rep. Fielder, Rep. Galloway, Rep. Gist, Rep. Gunderson, Rep. R. Knudsen, Rep. Malone and Rep. Noland voting no. Rep. Marler and Rep. Noland voted by proxy.

**EXECUTIVE ACTION ON SB 233**

15:33:34 **Motion/Vote:** Rep. R. Knudsen moved that **SB 233 BE CONCURRED IN.** Motion carried 14-1 by voice vote with Rep. Putnam voting no. Rep. Marler and Rep. Noland voted by proxy. Rep. Putnam will carry the bill.

**EXECUTIVE ACTION ON SB 249**

15:35:28 **Motion/Vote:** Rep. R. Knudsen moved that **SB 249 BE CONCURRED IN.** Motion carried unanimously by voice vote. Rep. Marler and Rep. Noland voted by proxy. Rep. Knudsen will carry the bill.

**EXECUTIVE ACTION ON SB 328**

15:36:54 **Motion:** Rep. R. Knudsen moved that **SB 328 BE CONCURRED IN.**

**Discussion:**

15:37:10 Vice Chair R. Knudsen  
 15:37:35 Joe Kolman, LSD  
 15:38:56 Rep. Malone  
 15:39:17 Joe Kolman, LSD  
 15:39:44 Vice Chair Curdy  
 15:39:53 Rep. France

15:41:25 **Motion/Vote:** Rep. Curdy moved that **SB 328 BE AMENDED**. Motion carried 8-7 by roll call vote with Rep. Fielder, Rep. Galloway, Rep. Gunderson, Rep. R. Knudsen, Rep. Malone, Rep. Noland and Rep. Walsh voting no. Rep. Marler and Rep. Noland voted by proxy.

**EXHIBIT(nah61a04)**

15:43:29 **Motion:** Rep. R. Knudsen moved that **SB 328 BE CONCURRED IN AS AMENDED**.

**Discussion:**

15:43:43 Rep. Malone  
15:44:00 Rep. Walsh  
15:44:24 Vice Chair Curdy  
15:45:12 Rep. France  
15:46:05 Vice Chair Curdy

15:46:17 **Vote:** Motion carried 12-3 by roll call vote with Rep. Fielder, Rep. Gunderson and Rep. Malone voting no. Rep. Marler and Rep. Noland voted by proxy. Rep. France will carry the bill.

**EXECUTIVE ACTION ON SB 348**

15:47:45 **Motion/Vote:** Rep. R. Knudsen moved that **SB 348 BE CONCURRED IN**. Motion carried unanimously by voice vote. Rep. Marler and Rep. Noland voted by proxy. Rep. Walsh will carry the bill.

**EXECUTIVE ACTION ON SB 352**

15:49:14 **Motion:** Rep. R. Knudsen moved that **SB 352 BE CONCURRED IN**.

**Discussion:**

15:49:21 Vice Chair R. Knudsen  
15:49:49 Joe Kolman, LSD

15:51:20 **Motion/Vote:** Rep. R. Knudsen moved that **SB 352 BE AMENDED**. Motion carried 13-2 by voice vote with Rep. R. Knudsen and Rep. Noland voting no. Rep. Marler and Rep. Noland voted by proxy.

**EXHIBIT(nah61a05)**

15:52:14 **Motion/Vote:** Rep. Curdy moved that **SB 352 BE TABLED**. Motion carried 11-4 by roll call vote with Rep. Fielder, Rep. Fitzgerald, Rep. Galloway and Rep. Malone voting no. Rep. Marler and Rep. Noland voted by proxy.

**HEARING ON HB 648**

**Opening Statement by Sponsor:**

15:54:12 Rep. Joshua Kassmier (R), HD 27, opened the hearing on HB 648, Generally revise natural resource laws.

**Proponents' Testimony:**

15:56:17 Tony O'Donnell, Montana Public Service Commission (PSC)

**Opponents' Testimony:**

15:58:05 Amy Seaman, Montana Audubon  
15:58:48 Derf Johnson, Montana Environmental Information Center (MEIC)  
15:59:00 Rep. Farris-Olsen left the meeting.  
16:02:40 Charles Sangmeister, self

**Informational Testimony:**

16:01:55 John Metesh, Montana Bureau of Minds and Geology (MBMG)

**Questions from Committee Members and Responses:**

16:04:15 Rep. Malone  
16:04:37 Rep. Kassmier

**Closing by Sponsor:**

16:05:08 Rep. Kassmier

**HEARING ON SB 358****Opening Statement by Sponsor:**

16:07:09 Sen. John Esp (R), SD 30, opened the hearing on SB 358, Repeal numeric nutrient standards for water quality.

[EXHIBIT\(nah61a06\)](#)

[EXHIBIT\(nah61a07\)](#)

**Proponents' Testimony:**

16:12:07 Alan Olson, Montana Petroleum Association (MPA)  
16:13:35 Tammy Johnson, Montana Mining Association (MMA)  
16:16:46 Peggy Trenk, Treasure State Resources Association (TSRA)  
16:18:51 Molly Schwend, Montana Coal Council (MCC)  
16:19:40 Kelly Lynch, Montana League of Cities and Towns (MLCT)

**Opponents' Testimony:**

16:22:49 Abigail St. Lawrence, Montana Building Industry Association (MBIA)  
16:24:25 Clayton Elliott, Trout Unlimited (TU)  
16:25:16 Ruben Castren, Montana Public Interest Research Group (MontPIRG)  
16:26:31 Vicki Watson, self

[EXHIBIT\(nah61a08\)](#)

16:29:42 Sam Carlson, self

[EXHIBIT\(nah61a09\)](#)

16:32:01 Betsy Baxter, self  
16:35:48 Charles Sangmeister, self  
16:37:57 Jerry Iverson, self  
16:40:57 Sarah Zuzulock, self  
16:45:07 Richard Parks, self

16:47:16 Travis Ross, Missoula City-County Health Department (MCCHD); Missoula Valley Water Quality District (MVWQD); Montana Environmental Health Association (MEHA)

**EXHIBIT(nah61a10)**

16:50:22 Guy Alsentzer, Upper Missouri Waterkeeper (UMW)

**EXHIBIT(nah61a11)**

16:54:02 Paul Hawks, self

16:56:36 Amy Seaman, Montana Audubon

16:58:53 Derf Johnson, Montana Environmental Information Center (MEIC)

**Informational Testimony:**

17:01:24 Myla Kelly, Department Environmental Quality (DEQ)

**Questions from Committee Members and Responses:**

17:03:15 Rep. Malone

17:03:41 Myla Kelly, DEQ

17:04:28 Rep. Gist

17:04:42 Myla Kelly, DEQ

17:05:15 Rep. Walsh

17:06:05 Myla Kelly, DEQ

17:06:35 Kurt Moser, Department Environmental Quality (DEQ)

17:08:16 Rep. Walsh

17:08:55 Kurt Moser, DEQ

17:09:56 Chair Gunderson

17:12:37 Tammy Johnson, MMA

17:13:24 Chair Gunderson

17:13:34 Alan Olson, MPA

17:15:25 Dave Galt, Montana Petroleum Association (MPA)

17:15:43 Chair Gunderson

17:15:53 Dave Galt, MPA

17:17:19 Vice Chair Curdy

17:17:59 Director Chris Dorrington, Department Environmental Quality (DEQ)

17:18:23 Dr. Mike Suplee, Department Environmental Quality (DEQ)

17:19:45 Vice Chair Curdy

17:22:05 Kurt Moser, DEQ

17:23:51 Rep. Putnam

17:24:42 Myla Kelly, DEQ

17:25:17 Rep. France

17:25:43 Myla Kelly, DEQ

17:26:12 Rep. France

17:27:43 Director Dorrington, DEQ

17:29:03 Tim Burton, Montana League of Cities and Towns (MLCT)

17:31:11 Rep. France

17:34:03 Tim Burton, MLCT

17:35:26 Vice Chair Curdy

17:37:14 Director Dorrington, DEQ

17:37:38 Rep. Galloway

17:40:05 Myla Kelly, DEQ



17:40:27 Director Dorrington, DEQ  
17:41:17 Rep. France  
17:41:47 Sen. Esp  
17:42:27 Rep. France  
17:42:43 Rep. Putnam  
17:43:08 Tim Burton, MLCT  
17:44:05 Chair Gunderson  
17:44:43 Dr. Suplee, DEQ

**Closing by Sponsor:**

17:46:53 Sen. Esp  
  
17:49:57 Rep. Malone  
17:50:06 Chair Gunderson

**ADJOURNMENT**

Adjournment: 17:50:44

---

Jacquelynn Bomgardner, Secretary

jb

Additional Documents:

**EXHIBIT**([nah61aad.pdf](#))

**DRAFT AMENDMENTS TO SB 358**

**Replace Section 1 in its entirety with the following:**

**NEW SECTION. Section 1. Transition for nutrient standards—rulemaking.** (1) The department shall adopt rules related to narrative nutrient standards in consultation with the nutrient work group by March 1, 2022.

(2) The rules shall provide for the development of an adaptive management program which provides an incremental, watershed approach for protecting and maintaining water quality and that:

- (a) reasonably balances all factors impacting a waterbody;
- (b) prioritizes the minimization of phosphorus, taking into account site-specific conditions;
- (c) identifies the appropriate response variables affected by nutrients and associated impact thresholds in accordance with the beneficial uses of the waterbody.

(3) In developing the rules in (2), the department shall consider options pertaining to whether the point source is new or existing and whether the receiving waterbody is considered impaired or unimpaired.

**Replace Section 2 in its entirety with the following:**

**Section 2. Transition.** (1) Until final rules are adopted pursuant to [section 1], the department shall administer the discharge permitting program under 75-5-402 in a manner consistent with ARM 17.30.637 and the intent of [this act].

(2) Any nutrient standards variances currently authorized and effective are hereby authorized and effective under 75-5-320 until otherwise amended or repealed.

**Section 3 remains as written.**

**Revised Section 4.** The department of environmental quality shall amend ARM 17.30.602 to delete all references to department circular DEQ-12A, department circular DEQ-12B, base numeric nutrient standards, and nutrient standards variances.

**Same proposed amendments to sections 5, 6.**

**Remove section 7.**

**Revised Section 8 as follows:**

**75-5-317(2)(u) (insert this and change existing (u) to new (v)) discharges of total phosphorus or total nitrogen that do not:**

- (a) create conditions which are toxic or harmful to human, animal, plant, and aquatic life; or**
- (b) create conditions which produce undesirable aquatic life.**

**Same new sections 9, 10, 11**

**NEW SECTION. Savings Clause.** [This act] does not affect nutrient standards variances granted before [the effective date of this act].

**NEW SECTION. Effective Date.** [This act] is effective on passage and approval.

**Amendment - 3rd Reading - Requested by: John Esp**

67th Legislature

Drafter: Jason Mohr, 406-444-1640

SB 358.1.1

1 SENATE BILL NO. 358  
2 INTRODUCED BY J. ESP  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING NUTRIENT CRITERIA FROM MONTANA WATER  
5 QUALITY STANDARDS; ELIMINATING VARIANCES AND COMPLIANCE SCHEDULES FOR NUTRIENTS;  
6 DIRECTING ADOPTION AND AMENDMENT OF ADMINISTRATIVE RULES; PROVIDING FOR A  
7 TRANSITION FOR NUTRIENT STANDARDS; PROVIDING RULEMAKING AUTHORITY AND AN EFFECTIVE  
8 DATE; AMENDING SECTIONS 75-5-103, 75-5-105, 75-5-301, 75-5-317, AND 75-5-320, MCA; AND  
9 REPEALING SECTIONS 75-5-313, 75-5-314, AND 75-5-319, MCA."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12  
13 **NEW SECTION. Section 1. Transition for nutrient standards -- board of environmental review.**

14 ~~The board of environmental rule shall adopt rules related to nutrient standards in consultation with the~~  
15 ~~department of environmental quality and the nutrient work group including:~~  
16 ~~(1) defining the terms "undesirable aquatic life" and "harmful" in a manner consistent with 75-5-301;~~  
17 ~~(2) developing an adaptive management program that provides an incremental approach for~~  
18 ~~restoration and preservation of water quality in streams impaired by nutrients;~~  
19 ~~(3) developing implementation guidance that:~~  
20 ~~(a) applies water quality effluent limitations for nutrients, either nitrogen or phosphorus;~~  
21 ~~(b) considers reasonable potential for total phosphorus and nitrogen after a full mixing of the~~  
22 ~~discharge with the minimum 14-day average streamflow that occurs once every 5 years in the receiving water~~  
23 ~~body;~~  
24 ~~(c) for existing dischargers, considers reasonable potential based on the algae level specified in 75-5-~~  
25 ~~301;~~  
26 ~~(d) for new dischargers, including existing dischargers with an increased source, considers~~  
27 ~~reasonable potential based on the following:~~  
28 ~~(i) for discharges within the level III ecoregion as designated by the U.S. environmental protection~~

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~~agency that includes the northern Rocky Mountains, Canadian Rocky Mountains, Idaho batholith, middle Rocky Mountains, except for the level IV ecoregion of the Absaroka-Gallatin volcanic mountains;~~

~~(A) total phosphorus concentrations of 0.03 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 0.8 milligrams per liter;~~

~~(ii) for discharges within the level III ecoregion as designated by the U.S. environmental protection~~

~~agency that includes the northwestern glaciated plains, northwestern great plains, and Wyoming basin,~~

~~excluding the level IV ecoregions of the sweetgrass uplands, Milk River pothole uplands, Rocky Mountain front~~

~~foothill potholes, foothill grasslands, river breaks, non-calcareous foothill grasslands, Shield-Smith River~~

~~valleys, limy foothill grasslands, Pryor-Bighorn foothills, and unglaciated Montana high plains;~~

~~(A) total phosphorous concentrations of 0.15 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 1.3 milligrams per liter;~~

~~(iii) for discharges within the level IV ecoregion as designated by the U.S. environmental protection~~

~~agency of the Absaroka-Gallatin volcanic mountains;~~

~~(A) total phosphorous concentrations of 0.105 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 0.80 milligrams per liter;~~

~~(iv) for discharges within the level IV ecoregions as designated by the U.S. environmental protection~~

~~agency excluded from subsection (3)(d)(ii) except for the river breaks for which no nutrient effluent limitations~~

~~apply:~~

~~(A) total phosphorous concentrations of 0.80 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 0.80 milligrams per liter;~~

~~(e) allows the department to develop reasonable potential guidelines based on concentrations or total phosphorous or total nitrogen greater than those provided in subsections (3)(c) and (3)(d) if:~~

~~(i) data demonstrate that existing concentrations of total phosphorous or total nitrogen exceed the concentrations provided in subsection (3)(a) through (3)(d) and that the discharge will not create conditions that are toxic or harmful to human, animal, plant, or aquatic life;~~

~~(ii) data demonstrate that existing algae levels exceed a monthly average of 150 milligrams of chlorophyll-a per square meter and that the discharge will not create conditions that are toxic or harmful to human, animal, plant, or aquatic life; or~~

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(iii) ~~data demonstrate that the receiving waterbody can sustain algae levels greater than a monthly average of 150 milligrams of chlorophyll a per square meter without creating conditions that are toxic or harmful to human, animal, plant, or aquatic life.~~

(1) ~~By March 1, 2022, the department shall adopt rules related to narrative nutrient standards in consultation with the nutrient work group.~~

(2) ~~The rules shall provide for the development of an adaptive management program which provides for an incremental watershed approach for protecting and maintaining water quality, and that:~~

~~(a) reasonably balances all factors impacting a water body;~~

~~(b) prioritizes the minimization of phosphorus, taking into account site-specific conditions; and~~

~~(c) identifies the appropriate response variables affected by nutrients and associated impact thresholds in accordance with the beneficial uses of the waterbody.~~

(3) ~~In developing the rules in (2), the department shall consider options pertaining to whether the point source is new or existing and whether the receiving water body is considered impaired or unimpaired.~~

**NEW SECTION. Section 2. Transition for nutrient standards -- department.** ~~Subject to board of environmental rulemaking pursuant to [section 1], the department of environmental quality shall implement water quality standards in a manner consistent with [this act] and consistent with [section 1].~~

(1) ~~Until final rules are adopted pursuant to [section 1], the department shall administer the discharge permitting program under 75-5-402 in a manner consistent with ARM 17.30.637 and the intent of [this act].~~

(2) ~~Any nutrient standards variances currently authorized and effective are hereby authorized and effective under 75-5-320 until otherwise amended or repealed.~~

**NEW SECTION. Section 3. Board to amend rules.** The board of environmental review shall amend ARM 17.30.201, 17.30.507, 17.30.516, 17.30.602, 17.30.619, 17.30.622, 17.30.623, 17.30.624, 17.30.625, 17.30.626, 17.30.627, 17.30.628, 17.30.629, 17.30.635, 17.30.702, and 17.30.715 to delete all references to department circular DEQ-12A, department circular DEQ-12B, base numeric nutrient standards, and nutrient standards variances.

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**NEW SECTION. Section 4. Department to amend rules.** The department of environmental quality

shall amend ARM 17.30.602 and ~~17.30.660~~ to delete all references to department circular DEQ-12A,  
department circular DEQ-12B, base numeric nutrient standards, and nutrient standards variances.

**Section 5.** Section 75-5-103, MCA, is amended to read:

**"75-5-103. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the  
following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an  
energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy  
development project.

~~(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface  
water that are adopted to protect the designated uses of a surface water body.~~

~~(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite  
that are adopted to protect human health.~~

~~(3) (2)~~ "Board" means the board of environmental review provided for in 2-15-3502.

~~(4) (3)~~ "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,  
or other wastes, creating a hazard to human health.

~~(5) (4)~~ "Council" means the water pollution control advisory council provided for in 2-15-2107.

~~(6) (5)~~ (a) "Currently available data" means data that is readily available to the department at the time  
a decision is made, including information supporting its previous lists of water bodies that are threatened or  
impaired.

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- 1 (b) The term does not mean new data to be obtained as a result of department efforts.
- 2 ~~(7)~~ (6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for
- 3 a parameter. The term does not include those changes in water quality determined to be nonsignificant
- 4 pursuant to 75-5-301(5)(c).
- 5 ~~(8)~~ (7) "Department" means the department of environmental quality provided for in 2-15-3501.
- 6 ~~(9)~~ (8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and
- 7 includes sewage systems and treatment works.
- 8 ~~(10)~~ (9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of
- 9 chemical, physical, biological, and other constituents that are discharged into state waters.
- 10 ~~(11)~~ (10) (a) "Energy development project" means each plant, unit, or other development and
- 11 associated developments, including any associated supporting infrastructure, designed for or capable of:
- 12 (i) generating electricity;
- 13 (ii) producing gas derived from coal;
- 14 (iii) producing liquid hydrocarbon products;
- 15 (iv) refining crude oil or natural gas;
- 16 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax
- 17 incentive pursuant to Title 15, chapter 70, part 5;
- 18 (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant
- 19 to 15-32-701; or
- 20 (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or
- 21 greater than 50 kilovolts.
- 22 (b) The term does not include a nuclear facility as defined in 75-20-1202.
- 23 ~~(12)~~ (11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,
- 24 whether or not those uses are included in the water quality standards.
- 25 ~~(13)~~ (12) "High-quality waters" means all state waters, except:
- 26 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by
- 27 the board's classification rules; and
- 28 (b) surface waters that:



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1 (i) are not capable of supporting any one of the designated uses for their classification; or

2 (ii) have zero flow or surface expression for more than 270 days during most years.

3 ~~(44)~~ (13) "Impaired water body" means a water body or stream segment for which sufficient credible  
4 data shows that the water body or stream segment is failing to achieve compliance with applicable water quality  
5 standards.

6 ~~(45)~~ (14) "Industrial waste" means a waste substance from the process of business or industry or from  
7 the development of any natural resource, together with any sewage that may be present.

8 ~~(46)~~ (15) "Interested person" means a person who has a real property interest, a water right, or an  
9 economic interest that is or may be directly and adversely affected by the department's preliminary decision  
10 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested  
11 authorization to degrade high-quality waters.

12 ~~(47)~~ (16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to  
13 one of its existing or future nonpoint sources or to natural background sources.

14 ~~(48)~~ (17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a  
15 violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the  
16 maximum change that can occur from the best practicable condition in a surface water without causing a  
17 violation of the surface water quality standards.

18 ~~(49)~~ (18) "Local department of health" means the staff, including health officers, employed by a county,  
19 city, city-county, or district board of health.

20 ~~(20)~~ (19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,  
21 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,  
22 thallium, and zinc.

23 ~~(24)~~ (20) "Mixing zone" means an area established in a permit or final decision on nondegradation  
24 issued by the department where water quality standards may be exceeded, subject to conditions that are  
25 imposed by the department and that are consistent with the rules adopted by the board.

26 ~~(22)~~ "Nutrient standards variance" means numeric water quality criteria for nutrients based on a  
27 determination that base numeric nutrient standards cannot be achieved because of economic impacts or  
28 because of the limits of technology. The term includes individual, general, and alternative nutrient standards

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1 ~~variances in accordance with 75-5-313.~~

2 ~~(23)~~ (21) "Nutrient work group" means an advisory work group, convened by the department,  
3 representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and  
4 other interested parties that will advise the department on ~~the base numeric nutrient standards, the~~  
5 ~~development of nutrient standards variances, and the implementation of those standards, and variances~~  
6 ~~together with associated economic impacts.~~

7 ~~(24)~~ (22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,  
8 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or  
9 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

10 ~~(25)~~ (23) "Outstanding resource waters" means:

11 (a) state surface waters located wholly within the boundaries of areas designated as national parks or  
12 national wilderness areas as of October 1, 1995; or

13 (b) other surface waters or ground waters classified by the board under the provisions of 75-5-316  
14 and approved by the legislature.

15 ~~(26)~~ (24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a  
16 point source.

17 ~~(27)~~ (25) "Parameter" means a physical, biological, or chemical property of state water when a value of  
18 that property affects the quality of the state water.

19 ~~(28)~~ (26) "Person" means the state, a political subdivision of the state, institution, firm, corporation,  
20 partnership, individual, or other entity and includes persons resident in Canada.

21 ~~(29)~~ (27) "Point source" means a discernible, confined, and discrete conveyance, including but not  
22 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or  
23 other floating craft, from which pollutants are or may be discharged.

24 ~~(30)~~ (28) (a) "Pollution" means:

25 (i) contamination or other alteration of the physical, chemical, or biological properties of state waters  
26 that exceeds that permitted by Montana water quality standards, including but not limited to standards relating  
27 to change in temperature, taste, color, turbidity, or odor; or

28 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other

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1 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or  
2 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other  
3 wildlife.

4 (b) The term does not include:

5 (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge  
6 permit rules adopted by the board under this chapter;

7 (ii) activities conducted under this chapter that comply with the conditions imposed by the department  
8 in short-term authorizations pursuant to 75-5-308;

9 (iii) contamination of ground water within the boundaries of an underground mine using in situ coal  
10 gasification and operating in accordance with a permit issued under 82-4-221.

11 (c) Contamination referred to in subsection ~~(30)(b)(iii)~~ ~~(28)(b)(iii)~~ does not require a mixing zone.

12 ~~(34)~~ (29) "Sewage" means water-carried waste products from residences, public buildings, institutions,  
13 or other buildings, including discharge from human beings or animals, together with ground water infiltration  
14 and surface water present.

15 ~~(32)~~ (30) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or  
16 other wastes to an ultimate disposal point.

17 ~~(33)~~ (31) "Standard of performance" means a standard adopted by the board for the control of the  
18 discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of  
19 the best available demonstrated control technology, processes, operating methods, or other alternatives,  
20 including, when practicable, a standard permitting no discharge of pollutants.

21 ~~(34)~~ (32) (a) "State waters" means a body of water, irrigation system, or drainage system, either  
22 surface or underground.

23 (b) The term does not apply to:

24 (i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

25 (ii) irrigation waters or land application disposal waters when the waters are used up within the  
26 irrigation or land application disposal system and the waters are not returned to state waters.

27 ~~(35)~~ (33) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in  
28 combination with narrative information, that supports a finding as to whether a water body is achieving

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- 1 compliance with applicable water quality standards.
- 2 ~~(36)~~ (34) "Threatened water body" means a water body or stream segment for which sufficient credible
- 3 data and calculated increases in loads show that the water body or stream segment is fully supporting its
- 4 designated uses but threatened for a particular designated use because of:
- 5 (a) proposed sources that are not subject to pollution prevention or control actions required by a
- 6 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or
- 7 (b) documented adverse pollution trends.
- 8 ~~(37)~~ (35) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations
- 9 for point sources and load allocations for both nonpoint sources and natural background sources established at
- 10 a level necessary to achieve compliance with applicable surface water quality standards.
- 11 ~~(38)~~ (36) "Treatment works" means works, including sewage lagoons, installed for treating or holding
- 12 sewage, industrial wastes, or other wastes.
- 13 ~~(39)~~ (37) "Waste load allocation" means the portion of a receiving water's loading capacity that is
- 14 allocated to one of its existing or future point sources.
- 15 ~~(40)~~ (38) "Water quality protection practices" means those activities, prohibitions, maintenance
- 16 procedures, or other management practices applied to point and nonpoint sources designed to protect,
- 17 maintain, and improve the quality of state waters. Water quality protection practices include but are not limited
- 18 to treatment requirements, standards of performance, effluent standards, and operating procedures and
- 19 practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.
- 20 ~~(41)~~ (39) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or
- 21 otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.
- 22 ~~(42)~~ (40) "Watershed advisory group" means a group of individuals who wish to participate in an
- 23 advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the
- 24 development of TMDLs under 75-5-703, including those groups or individuals requested by the department to
- 25 participate in an advisory capacity as provided in 75-5-704.
- 26 **75-5-103. (Effective on occurrence of contingency) Definitions.** Unless the context requires
- 27 otherwise, in this chapter, the following definitions apply:
- 28 (1) "Associated supporting infrastructure" means:

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- 1 (a) electric transmission and distribution facilities;  
2 (b) pipeline facilities;  
3 (c) aboveground ponds and reservoirs and underground storage reservoirs;  
4 (d) rail transportation;  
5 (e) aqueducts and diversion dams;  
6 (f) devices or equipment associated with the delivery of an energy form or product produced at an  
7 energy development project; or  
8 (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy  
9 development project.

10 ~~(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface~~  
11 ~~water that are adopted to protect the designated uses of a surface water body.~~

12 ~~(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite~~  
13 ~~that are adopted to protect human health.~~

14 ~~(3) (2)~~ "Board" means the board of environmental review provided for in 2-15-3502.

15 ~~(4) (3)~~ "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,  
16 or other wastes, creating a hazard to human health.

17 ~~(5) (4)~~ "Council" means the water pollution control advisory council provided for in 2-15-2107.

18 ~~(6) (5)~~ (a) "Currently available data" means data that is readily available to the department at the time  
19 a decision is made, including information supporting its previous lists of water bodies that are threatened or  
20 impaired.

21 (b) The term does not mean new data to be obtained as a result of department efforts.

22 ~~(7) (6)~~ "Degradation" means a change in water quality that lowers the quality of high-quality waters for  
23 a parameter. The term does not include those changes in water quality determined to be nonsignificant  
24 pursuant to 75-5-301(5)(c).

25 ~~(8) (7)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

26 ~~(9) (8)~~ "Disposal system" means a system for disposing of sewage, industrial, or other wastes and  
27 includes sewage systems and treatment works.

28 ~~(10) (9)~~ "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of

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- 1 chemical, physical, biological, and other constituents that are discharged into state waters.
- 2 ~~(11)~~ (10) (a) "Energy development project" means each plant, unit, or other development and
- 3 associated developments, including any associated supporting infrastructure, designed for or capable of:
- 4 (i) generating electricity;
- 5 (ii) producing gas derived from coal;
- 6 (iii) producing liquid hydrocarbon products;
- 7 (iv) refining crude oil or natural gas;
- 8 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax
- 9 incentive pursuant to Title 15, chapter 70, part 5;
- 10 (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant
- 11 to 15-32-701; or
- 12 (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or
- 13 greater than 50 kilovolts.
- 14 (b) The term does not include a nuclear facility as defined in 75-20-1202.
- 15 ~~(12)~~ (11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,
- 16 whether or not those uses are included in the water quality standards.
- 17 ~~(13)~~ (12) "High-quality waters" means all state waters, except:
- 18 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by
- 19 the board's classification rules; and
- 20 (b) surface waters that:
- 21 (i) are not capable of supporting any one of the designated uses for their classification; or
- 22 (ii) have zero flow or surface expression for more than 270 days during most years.
- 23 ~~(14)~~ (13) "Impaired water body" means a water body or stream segment for which sufficient credible
- 24 data shows that the water body or stream segment is failing to achieve compliance with applicable water quality
- 25 standards.
- 26 ~~(15)~~ (14) "Industrial waste" means a waste substance from the process of business or industry or from
- 27 the development of any natural resource, together with any sewage that may be present.
- 28 ~~(16)~~ (15) "Interested person" means a person who has a real property interest, a water right, or an

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1 economic interest that is or may be directly and adversely affected by the department's preliminary decision  
2 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested  
3 authorization to degrade high-quality waters.

4 ~~(17)~~ (16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to  
5 one of its existing or future nonpoint sources or to natural background sources.

6 ~~(18)~~ (17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a  
7 violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the  
8 maximum change that can occur from the best practicable condition in a surface water without causing a  
9 violation of the surface water quality standards.

10 ~~(19)~~ (18) "Local department of health" means the staff, including health officers, employed by a county,  
11 city, city-county, or district board of health.

12 ~~(20)~~ (19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,  
13 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,  
14 thallium, and zinc.

15 ~~(21)~~ (20) "Mixing zone" means an area established in a permit or final decision on nondegradation  
16 issued by the department where water quality standards may be exceeded, subject to conditions that are  
17 imposed by the department and that are consistent with the rules adopted by the board.

18 ~~(22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a~~  
19 ~~determination that base numeric nutrient standards cannot be achieved because of economic impacts or~~  
20 ~~because of the limits of technology. The term includes individual, general, and alternative nutrient standards~~  
21 ~~variances in accordance with 75-5-313.~~

22 ~~(23)~~ (21) "Nutrient work group" means an advisory work group, convened by the department,  
23 representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and  
24 other interested parties that will advise the department on ~~the base numeric nutrient standards, the~~  
25 ~~development of nutrient standards variances, and the implementation of those standards, and variances~~  
26 ~~together with associated economic impacts.~~

27 ~~(24)~~ (22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,  
28 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or

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- 1 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.
- 2 ~~(25)~~ (23) "Outstanding resource waters" means:
- 3 (a) state surface waters located wholly within the boundaries of areas designated as national parks or
- 4 national wilderness areas as of October 1, 1995; or
- 5 (b) other surface waters or ground waters classified by the board under the provisions of 75-5-316
- 6 and approved by the legislature.
- 7 ~~(26)~~ (24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a
- 8 point source.
- 9 ~~(27)~~ (25) "Parameter" means a physical, biological, or chemical property of state water when a value of
- 10 that property affects the quality of the state water.
- 11 ~~(28)~~ (26) "Person" means the state, a political subdivision of the state, institution, firm, corporation,
- 12 partnership, individual, or other entity and includes persons resident in Canada.
- 13 ~~(29)~~ (27) "Point source" means a discernible, confined, and discrete conveyance, including but not
- 14 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or
- 15 other floating craft, from which pollutants are or may be discharged.
- 16 ~~(30)~~ (28) (a) "Pollution" means:
- 17 (i) contamination or other alteration of the physical, chemical, or biological properties of state waters
- 18 that exceeds that permitted by Montana water quality standards, including but not limited to standards relating
- 19 to change in temperature, taste, color, turbidity, or odor; or
- 20 (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other
- 21 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or
- 22 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other
- 23 wildlife.
- 24 (b) The term does not include:
- 25 (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge
- 26 permit rules adopted by the board under this chapter;
- 27 (ii) activities conducted under this chapter that comply with the conditions imposed by the department
- 28 in short-term authorizations pursuant to 75-5-308;



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(iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1;

(iv) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221;

(c) Contamination referred to in subsections ~~(30)(b)(iii) and (30)(b)(iv)~~ (28)(b)(iii) and (28)(b)(iv) does not require a mixing zone.

~~(34)~~ (29) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(32)~~ (30) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(33)~~ (31) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(34)~~ (32) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(35)~~ (33) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(36)~~ (34) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

**Amendment - 3rd Reading - Requested by: John Esp**

67th Legislature

Drafter: Jason Mohr, 406-444-1640

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1 (a) proposed sources that are not subject to pollution prevention or control actions required by a  
2 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or  
3 (b) documented adverse pollution trends.  
4 ~~(37)~~ (35) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations  
5 for point sources and load allocations for both nonpoint sources and natural background sources established at  
6 a level necessary to achieve compliance with applicable surface water quality standards.  
7 ~~(38)~~ (36) "Treatment works" means works, including sewage lagoons, installed for treating or holding  
8 sewage, industrial wastes, or other wastes.  
9 ~~(39)~~ (37) "Waste load allocation" means the portion of a receiving water's loading capacity that is  
10 allocated to one of its existing or future point sources.  
11 ~~(40)~~ (38) "Water quality protection practices" means those activities, prohibitions, maintenance  
12 procedures, or other management practices applied to point and nonpoint sources designed to protect,  
13 maintain, and improve the quality of state waters. Water quality protection practices include but are not limited  
14 to treatment requirements, standards of performance, effluent standards, and operating procedures and  
15 practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.  
16 ~~(41)~~ (39) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or  
17 otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.  
18 ~~(42)~~ (40) "Watershed advisory group" means a group of individuals who wish to participate in an  
19 advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the  
20 development of TMDLs under 75-5-703, including those groups or individuals requested by the department to  
21 participate in an advisory capacity as provided in 75-5-704."

22

23 **Section 6.** Section 75-5-105, MCA, is amended to read:

24 **"75-5-105. Confidentiality of records.** Except as provided in 80-15-108, any information concerning  
25 sources of pollution that is furnished to the board or department or that is obtained by either of them is a matter  
26 of public record and open to public use. However, any information unique to the owner or operator of a source  
27 of pollution that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be  
28 maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file

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1 a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the  
2 information to remain confidential. The department must be served in the action and may intervene as a party.  
3 Any information not intended to be public when submitted to the board or department must be submitted in  
4 writing and clearly marked as confidential. ~~Except as provided in 75-5-314, the~~ The data describing physical  
5 and chemical characteristics of a waste discharged to state waters may not be considered confidential. The  
6 board may use any information in compiling or publishing analyses or summaries relating to water pollution if  
7 the analyses or summaries do not identify any owner or operator of a source of pollution or reveal any  
8 information that is otherwise made confidential by this section."

10 ~~Section 7.~~ Section 75-5-301, MCA, is amended to read:

11 ~~"75-5-301. Classification and standards for state waters. Consistent with the provisions of 80-15-~~  
12 ~~201 and this chapter, the board shall:~~

13 ~~(1) establish the classification of all state waters in accordance with their present and future most~~  
14 ~~beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an~~  
15 ~~aquatic ecosystem that includes salmonid or nonsalmonid fish;~~

16 ~~(2) formulate and adopt standards of water quality, giving consideration to the economics of waste~~  
17 ~~treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the~~  
18 ~~requirements of 75-5-312. Standards adopted by the board must meet the following requirements:~~

19 ~~(a) for carcinogens, the water quality standard for protection of human health must be the value~~  
20 ~~associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed  $1 \times$~~   
21  ~~$10^{-3}$  in the case of arsenic and  $1 \times 10^{-6}$  for other carcinogens. However, if a standard established at a risk level~~  
22 ~~of  $1 \times 10^{-3}$  for arsenic or  $1 \times 10^{-6}$  for other carcinogens violates the maximum contaminant level obtained from~~  
23 ~~40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.~~

24 ~~(b) standards for the protection of aquatic life do not apply to ground water.~~

25 ~~(c) nutrient water quality standards, whether numeric or narrative, apply only:~~

26 ~~(i) to streams, except for ephemeral streams, with algae levels greater than a monthly average of 150~~  
27 ~~milligrams of chlorophyll a per square meter based on field values, or a calibrated water quality model if field~~  
28 ~~values are unavailable; and~~

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1 ~~(ii) between July 1 and September 30 of each calendar year;~~  
2 ~~(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this~~  
3 ~~chapter, revise established classifications of waters and adopted standards of water quality;~~  
4 ~~(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the~~  
5 ~~department be specifically identified and requiring that mixing zones have:~~  
6 ~~(a) the smallest practicable size;~~  
7 ~~(b) a minimum practicable effect on water uses; and~~  
8 ~~(c) definable boundaries;~~  
9 ~~(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not~~  
10 ~~limited to rules that:~~  
11 ~~(a) provide a procedure for department review and authorization of degradation;~~  
12 ~~(b) establish criteria for the following:~~  
13 ~~(i) determining important economic or social development; and~~  
14 ~~(ii) weighing the social and economic importance to the public of allowing the proposed project against~~  
15 ~~the cost to society associated with a loss of water quality;~~  
16 ~~(c) establish criteria for determining whether a proposed activity or class of activities, in addition to~~  
17 ~~those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in~~  
18 ~~order that those activities are not required to undergo review under 75-5-303(3). These criteria must be~~  
19 ~~established in a manner that generally:~~  
20 ~~(i) equates significance with the potential for harm to human health, a beneficial use, or the~~  
21 ~~environment;~~  
22 ~~(ii) considers both the quantity and the strength of the pollutant;~~  
23 ~~(iii) considers the length of time the degradation will occur;~~  
24 ~~(iv) considers the character of the pollutant so that greater significance is associated with carcinogens~~  
25 ~~and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less~~  
26 ~~harmful or less persistent.~~  
27 ~~(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will~~  
28 ~~not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of~~

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~~the ground water mixing zone does not exceed:~~

~~(i) 7.5 milligrams per liter from sources other than sewage;~~

~~(ii) 5.0 milligrams per liter from sewage discharged from a system that does not use level two~~

~~treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less;~~

~~(iii) 7.5 milligrams per liter from sewage discharged from a system using level two treatment, which~~

~~must be defined in the rules; or~~

~~(iv) 7.5 milligrams per liter from sewage discharged from a system in areas where the ground water~~

~~nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.~~

~~(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective~~

~~and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute~~

~~guidelines for granting or denying applications for authorization to degrade high quality waters under the policy~~

~~established in 75-5-303(2) and (3).~~

~~(7) adopt rules to implement this section."~~

Section 7, Section 8, Section 75-5-317, MCA, is amended to read:

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**"75-5-317. Nonsignificant activities.** (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

(a) existing activities that are nonpoint sources of pollution as of April 29, 1993;

(b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;

(c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;

(d) changes in existing water quality resulting from an emergency or remedial activity that is designed to protect public health or the environment and is approved, authorized, or required by the department;

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- 1 (e) changes in existing ground water quality resulting from treatment of a public water supply system,  
2 as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar  
3 means that is designed to protect the public health or the environment and that is approved, authorized, or  
4 required by the department;
- 5 (f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well  
6 or monitoring well drilling, development, or abandonment, if used according to department-approved water  
7 quality protection practices and if no discharge to surface water will occur;
- 8 (g) short-term changes in existing water quality resulting from activities authorized by the department  
9 pursuant to 75-5-308;
- 10 (h) land application of animal waste, domestic septage, or waste from public sewage treatment  
11 systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates  
12 are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;
- 13 (i) use of gray water, as defined in 75-5-325, from nonpublic gray water reuse systems for irrigation  
14 during the growing season in accordance with gray water reuse rules adopted pursuant to 75-5-305;
- 15 (j) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a  
16 public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and  
17 constructed in accordance with Title 75, chapter 6;
- 18 (k) discharges of water to ground water from water well or monitoring well tests, hydrostatic pressure  
19 and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs,  
20 conducted in accordance with department-approved water quality protection practices;
- 21 (l) oil and gas drilling, production, abandonment, plugging, and restoration activities that do not result  
22 in discharges to surface water and that are performed in accordance with Title 82, chapter 10, or Title 82,  
23 chapter 11;
- 24 (m) short-term changes in existing water quality resulting from ordinary and everyday activities of  
25 humans or domesticated animals, including but not limited to:
- 26 (i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;  
27 (ii) fording of streams or other bodies of water by vehicular or other means; and  
28 (iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated

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1 animals;

2 (n) coal and uranium prospecting that does not result in a discharge to surface water, that does not

3 involve a test pit located in surface water or that may affect surface water, and that is performed in accordance

4 with Title 82, chapter 4;

5 (o) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle

6 graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part

7 5;

8 (p) hazardous waste management facilities permitted and operated in accordance with Title 75,

9 chapter 10, part 4;

10 (q) metallic and nonmetallic mineral exploration that does not result in a discharge to surface water

11 and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;

12 (r) stream-related construction projects or stream enhancement projects that result in temporary

13 changes to water quality but do not result in long-term detrimental effects and that have been authorized

14 pursuant to 75-5-318;

15 (s) diversions or withdrawals of water established and recognized under Title 85, chapter 2;

16 (t) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that

17 are related to existing water rights and that are within wilderness areas so long as existing and anticipated

18 beneficial uses are protected and as long as the changes in existing water quality relative to the project are

19 short term; and

20 (u) discharges of total phosphorus or total nitrogen that do not:

21 (i) create conditions which are toxic or harmful to human, animal, plant, and aquatic life; or

22 (ii) create conditions which produce undesirable aquatic life; and

23 ~~(u)(v)~~ discharges that, after full mixing with the minimum 14-day average streamflow that occurs once

24 every 5 years, result in algae levels less than or equal to a monthly average of 150 milligrams of chlorophyll-a

25 per square meter during the time period from July 1 through September 30; and

26 ~~(u) (v) — any other activity that is nonsignificant because of its low potential for harm to human health or~~

27 ~~to the environment and its conformance with the guidance found in 75-5-301(5)(c)."~~

28



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67th Legislature

Drafter: Jason Mohr, 406-444-1640

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**Section 8, Section 9.** Section 75-5-320, MCA, is amended to read:

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**"75-5-320. Temporary water quality standards variances.** (1) Except as provided in 75-5-222(2)

and 75-5-343, the department may adopt rules providing criteria and procedures for the department to issue a temporary variance to water quality standards if:

(a) a variance will not result in a lowering of currently attained, ambient water quality;

(b) the department rules are consistent, as necessary, with federal rules that authorize states to adopt variances from standards, including but not limited to 40 CFR 131.14; and

(c) (i) a permittee cannot reasonably expect to meet a water quality standard during the permit term for which the variance is approved; and

(ii) a permit compliance schedule is not feasible to preclude the need for a variance during the permit term for which the variance is approved.

(2) In order to receive a temporary variance, a permittee shall evaluate facility operations and infrastructure to maximize pollutant reduction through an optimization study. The variance must require the implementation of optimization study actions as terms and conditions of the discharge permit.

(3) The department shall review a temporary variance issued pursuant to this section at least once every 5 years and may continue, modify, or terminate the temporary variance as a result of the review."

**NEW SECTION. Section 9, Section 10. Repealer.** (1) The following sections of the Montana Code

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Annotated are repealed:

75-5-313. Nutrient standards variances -- individual, general, and alternative.

75-5-314. Confidentiality of base numeric standards and nutrient standards variances.

75-5-319. Compliance schedule for base numeric nutrient standards.

(2). ARM 17.30.660 is repealed.

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**NEW SECTION. Section 10, Section 11.** **Codification instruction.** [Sections 1 and 2] are intended

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to be codified as an integral part of Title 75, chapter 5, and the provisions of Title 75, chapter 5, apply to

[sections 1 and 2].



**Amendment - 3rd Reading - Requested by: John Esp**

67th Legislature

Drafter: Jason Mohr, 406-444-1640

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1

2        NEW SECTION. ~~Section 11.~~Section 12. {standard} **Saving clause.** [This act] does not affect nutrient  
3 standards variances granted before [the effective date of this act], or rights and duties that matured, penalties  
4 that were incurred, or proceedings that were begun before [the effective date of this act].

5

6        NEW SECTION. ~~Section 12.~~Section 13. {standard} **Effective date.** [This act] is effective on passage  
7 and approval.

8

- END -

## LEG Committee-House Natural Resource testimony

EXHIBIT 8  
DATE 3-29-2021  
SB 358

**From:** leg-noreply@mt.gov  
**Sent:** Saturday, March 27, 2021 11:28 AM  
**To:** LEG Applications Email Backup; LEG Committee-House Natural Resource testimony  
**Subject:** Public Comment for Bill SB-358: Repeal numeric nutrient standards for water quality  
2021-03-29 03:00 PM - (H) Natural Resources Successfully Submitted on 03-27-21 11:27

### Details:

Bill: SB-358: Repeal numeric nutrient standards for water quality 2021-03-29 03:00 PM - (H) Natural Resources

Position: Opponent

Representing an Entity/Another Person: No

Organization: N/A

Name: Vicki Watson

Email: h2oshed1@hotmail.com

Phone: (406) 531-7596

City, State: Missoula MT

Written Statement: SB 358 would repeal Montana's science-based numeric nutrient standards which are essential to setting science-based nutrient load limits to prevent water quality degradation. Many Montana streams are impaired by nuisance algae growths fueled by excess nutrient loading. Nuisance algae deplete oxygen levels on hot summer nights, harming fisheries. Nuisance algae also clog irrigation systems and are unsightly, harming both our agricultural and recreation industries. We need numeric nutrient standards to clean up current problems and prevent future problems, especially as Montana's population grows.

Montana's numeric nutrient standards are based on over 20 years of field and lab research conducted in Montana by scientists at Montana universities and Montana DEQ. Our standards are considered a model of science-based standards, and our approach has been adopted by other states. Narrative standards have not been able to prevent degradation caused by nutrients. Numeric standards are needed. Please do not repeal them. Vote no on SB 358.

Thank you for your service.

Files:

Testify via Zoom: Yes

Zoom Method: Phone

## LEG Committee-House Natural Resource testimony

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**From:** leg-noreply@mt.gov  
**Sent:** Saturday, March 27, 2021 11:34 AM  
**To:** LEG Applications Email Backup; LEG Committee-House Natural Resource testimony  
**Subject:** Public Comment for Bill SB-358: Repeal numeric nutrient standards for water quality  
2021-03-29 03:00 PM - (H) Natural Resources Successfully Submitted on 03-27-21 11:34

### Details:

Bill: SB-358: Repeal numeric nutrient standards for water quality 2021-03-29 03:00 PM - (H) Natural Resources

Position: Opponent

Representing an Entity/Another Person: No

Organization: N/A

Name: Vicki Watson

Email: h2oshed1@hotmail.com

Phone: (406) 531-7596

City, State: Missoula, MT

Written Statement: Mr. Chair and Madam Chair, members of the Committee. Thank you for your service.

My name is Vicki Watson, and I am speaking for myself. I am a watershed scientist who worked for 40 years in our great state's university system. My area of focus is water quality science.

SB 358 would repeal Montana's science-based numeric nutrient standards which are essential to setting science-based nutrient load limits to prevent water quality degradation. Many Montana streams are impaired by nuisance algae growths fueled by excess nutrient loading. Nuisance algae deplete oxygen levels on hot summer nights, harming fisheries. Nuisance algae also clog irrigation systems and are unsightly, harming both our agricultural and recreation industries. We need numeric nutrient standards to clean up current problems and prevent future problems, especially as Montana's population grows.

Montana's numeric nutrient standards are based on over 20 years of field and lab research conducted in Montana by scientists at Montana universities and Montana DEQ. Our standards are considered a model of science-based standards and our approach has been adopted by other states. Narrative standards have not been able to prevent degradation caused by nutrients. Numeric standards are needed. Please do not repeal them. Vote no on SB 358.

Thank you for your service.

Files:

Testify via Zoom: Yes

Zoom Method: Phone

**LEG Committee-House Natural Resource testimony**

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**From:** leg-noreply@mt.gov  
**Sent:** Sunday, March 28, 2021 9:11 AM  
**To:** LEG Applications Email Backup; LEG Committee-House Natural Resource testimony  
**Subject:** Public Comment for Bill SB-358: Repeal numeric nutrient standards for water quality  
2021-03-29 03:00 PM - (H) Natural Resources Successfully Submitted on 03-28-21 09:10

**Details:**

Bill: SB-358: Repeal numeric nutrient standards for water quality 2021-03-29 03:00 PM - (H) Natural Resources

Position: Opponent

Representing an Entity/Another Person: No

Organization: N/A

Name: Dr. Samuel Paul Carlson

Email: sam.p.carlson@gmail.com

Phone: (406) 599-5871

City, State: Bozeman MT

Written Statement: As a headwater state, we have the responsibility to protect our water resources for Montanans and downstream users. The current numeric standards have been developed by scientists and state agencies, and provide a safe and reasonable framework for understanding and regulating our water quality challenges. SB 358 would repeal this known system, and replace it with a costly, difficult, and uncertain approach.

Successful protection of Montana's surface waters from nutrient impairment under SB 358 depends upon developing a comprehensive understanding of the impacts of nutrient discharges on a waterbody - and a subsequent determination whether or not a waterbody is free from nutrient impairment.

Even at a local scale, making these determinations can be costly and difficult. The impacts of nutrients on water quality, aquatic life, and beneficial use are shaped by interactions between nutrients and many other aquatic characteristics - including the physical form of a water body, water temperature, dissolved oxygen, and the biological community present.

In my experience, developing a sufficient understanding of these dynamics requires substantial resources and an extended timeframe.

Further, water quality is not a local issue - our water resources are a common good shared across the country.

Protecting water resources requires consideration of both local and downstream impacts. This adds even greater complexity to the evaluation of potential nutrient impairment, as local sources can contribute to downstream issues, even in the absence of local impairment.

The current approach for managing nutrients in Montana's water resources can and should be improved.

I suggest that there are many options to improve the current nutrient standard, including providing better support for incremental progress towards compliance with the current standards. Refining our existing framework provides a clear, safe, and viable approach, while SB 358 provides increased cost, risk, and uncertainty.

Files:

Testify via Zoom: Yes

Zoom Method: Computer



Missoula City-County Health Department  
WATER QUALITY DISTRICT  
301 W Alder | Missoula MT 59802-4123  
[www.missoulacounty.us/wqd](http://www.missoulacounty.us/wqd)  
Phone | 406.258.4890  
Fax | 406.258.4781

March 29, 2021

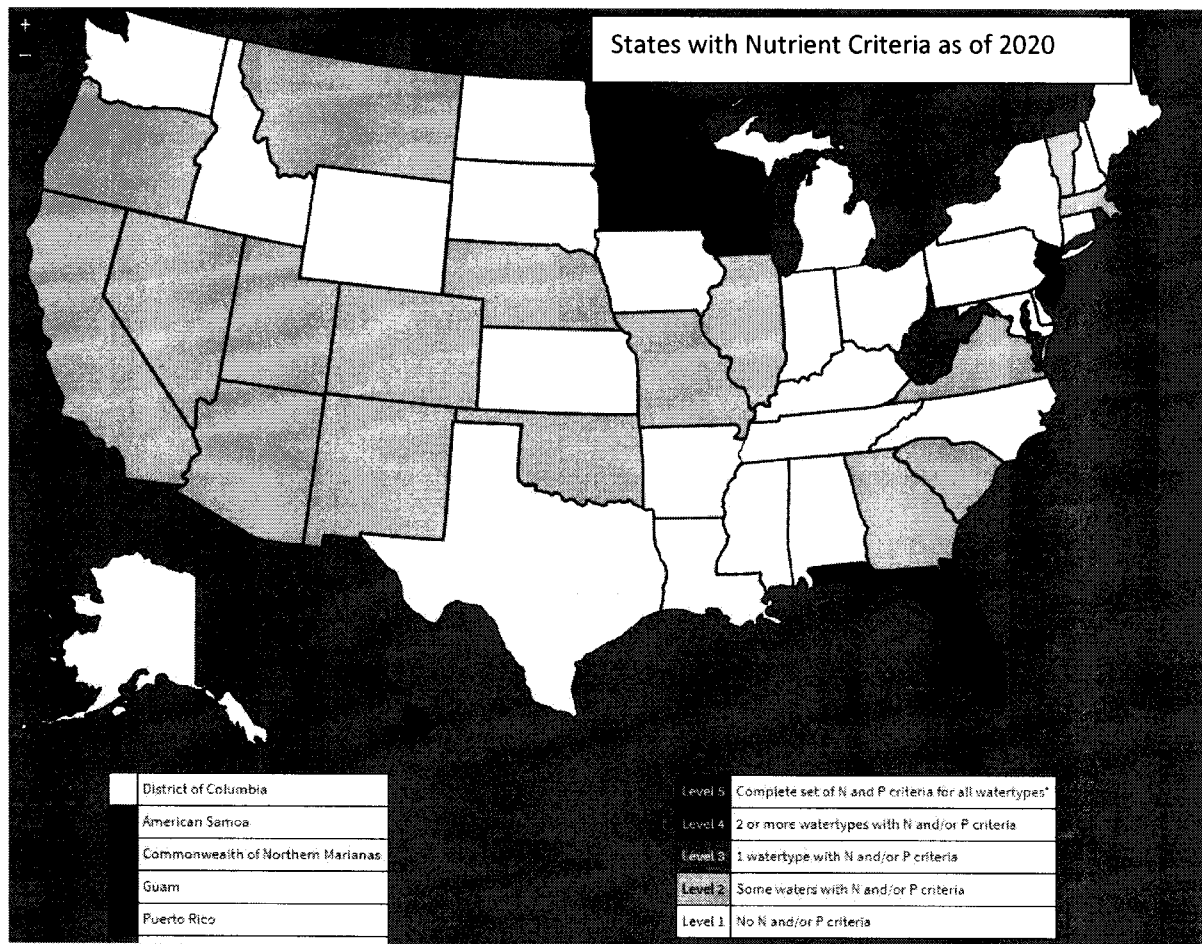
RE: SB 358

Dear Chair Gunderson and members of the House Natural Resources Committee

Montana's recreational economy depends on our fisheries. Rocky Mountain Trout Streams are clear, cool, **oxygen-rich** water. When excessive nutrients (nitrogen and phosphorous) are present in these streams, algae flourishes. Algae depletes oxygen. Nutrients are primarily introduced to surface waters through human and animal waste, both septic systems and wastewater treatment plants. The state has done the work to establish a numeric nutrient standard for the stream before excess algae starts to appear. When new septic systems are designed, a back-calculation of how large and how close those septic systems can be to a stream before raising nutrient levels (non-degradation analysis) past what the stream can handle. Further, those maximum loads are used to divvy up the loads from permitted larger dischargers, primarily wastewater treatment plants. This bill removes this calculated concentration of nitrogen and phosphorous that is necessary to evaluate new loads to our streams.

- Many of our state surface waters (including the Clark Fork and Bitterroot) are impaired due to excess nutrients. This is an official designation by DEQ through on-the-ground assessments of streams. **42% of the length of state perennial streams have even been assessed. Of those, 15% are impaired due to nutrients.**
- The Clark Fork Voluntary Nutrient Reduction Program (VNRP), a 10-year cooperative agreement from 1998 to 2008 that included the basin's four largest point-source dischargers—the municipal wastewater treatment plants in Butte, Deer Lodge, and Missoula, and the (former) Smurfit-Stone Mill was used to successfully reduce total phosphorus discharge by 72% from 1990 levels, and total nitrogen discharge reduced by 32%. This all hinged on in-stream standards that were adopted as part of this program. In-stream concentrations of phosphorous at Deer Lodge and Missoula were cut in half. **Nutrient standards work.**
- **Excess nutrients can also cause harmful algal blooms (HABs) to occur, which can cause illness in humans, pets, and wildlife.** We have seen harmful algal blooms across the state putting recreational users and residents who use surface water for their drinking water source at risk. Coupling high summer stream temperatures with excess nutrients in streams sets the stage for more nuisance algae and harmful algal blooms to occur.
- Non-Degradation rules and nutrient standards are to protect the beneficial uses of high-quality state waters. Discharges are granted mixing zones to allow for exceedances of standards while becoming incorporated into the receiving water. How will sanitarians evaluate non-degradation without having targets?
- Numeric standards provide certainty to dischargers, regulators, and non-point source contributors. This proposal calls for adaptive management which pits dischargers against each other and sets the stage for even more litigation.

- It seems unlikely for EPA to approve a **backslide in nutrient standards**.



<https://www.epa.gov/nutrient-policy-data/state-progress-toward-developing-numeric-nutrient-water-quality-criteria>

**Bottom Line:**

**Removal of standards because they are inconvenient is bad science, policy, and not in the best interest of our state. We urge you to vote no on SB 358**

Sincerely,

Travis Ross

## Missoula Valley Water Quality District

**LEG Committee-House Natural Resource testimony**

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**From:** leg-noreply@mt.gov  
**Sent:** Friday, March 26, 2021 9:29 AM  
**To:** LEG Applications Email Backup; LEG Committee-House Natural Resource testimony  
**Subject:** Public Comment for Bill SB-358: Repeal numeric nutrient standards for water quality  
2021-03-29 03:00 PM - (H) Natural Resources Successfully Submitted on 03-26-21 09:29

**Details:**

Bill: SB-358: Repeal numeric nutrient standards for water quality 2021-03-29 03:00 PM - (H) Natural Resources

Position: Opponent

Representing an Entity/Another Person: Yes

Organization: Upper Missouri Waterkeeper

Name: Guy Alsentzer

Email: [guy@uppermissouriwaterkeeper.org](mailto:guy@uppermissouriwaterkeeper.org)

Phone: (406) 570-2202

City, State: Bozeman, MT

Written Statement: Upper Missouri Waterkeeper opposes SB-358 because it abandons a proven, transparent, effective and science-based system of accountability for protecting the health of Montana's waterways. Decades of science and over forty years of pollution regulation across the Nation have proven, without a doubt, that numeric water quality standards offer the best approach to both measurable reductions in harmful waterway pollution and clear economic expectations for the regulated community.

Montana DEQ and the regulated community have never faithfully implemented the long-term pollution control strategies called for under both the federal CWA and state numeric nutrient criteria, and in fact protested meaningful investments in controlling significant sources of nutrient pollution to our waterways. It is no surprise then that, with little effort made to control pollution that results are slim and future requirements daunting, and the regulated community therefore seeks to prematurely conclude the system as a whole should be scraped and the baby thrown out with the bath water. Put simply this bill is a solution in search of a problem, and will result in Montana handicapping its ability to meaningfully control the low-hanging fruit of point-source pollution.

Furthermore, the bill ignores tenants of cooperative federalism and the legal reality that Montana's Legislature is without authority to, own its own, repeal science-based nutrient pollution control standards. Rather, such repeal action can only be accomplished on the basis of significant scientific findings demonstrating the previous rules were in factual error, and even then only upon EPA approval and in compliance with federal law. Waterkeeper believes no legal basis exists for this bill's approach and therefore as an organization dedicated to ensuring Montana faithfully implements mandatory clean water protections for our rivers we oppose this bill.

Ironically, many bill proponents argue that repealing nutrient rules is necessary to protect economic health. Those proponents are cherry-picking data with an incredibly short-term view of economic health. Pursuing repeal of Montana's numeric nutrient criteria rules will create serious, long-term economic hardship for the regulated sector as commitments to upgrade pollution control technology are further pushed into the future, while the underlying necessity and requirements to improve pollution control will in fact remain and the bill will come due. Montana's regulated sectors and its citizens are better served by responsibly planning how to finance critical pollution control measures now, with a clear understanding of long term expectations and near-term commitments, as opposed to burying our heads in the sands and fighting progress.

Lastly, it bears mentioning that Montana continues to face recurrent, serious nutrient pollution challenges in most of our river systems. Many of these nutrient issues are directly related to man-made nutrient pollution. As our population centers continue to grow, our annual summer low-flows become more acute, and more nutrient pollution disposal



challenges arise, it is critical that we remember the basis of our state's outdoors based economy is clean and healthy rivers. Our Outdoors Economy - roughly 5% of our annual GDP and valued at over 4 billion annually - depends on healthy, clean waterways. Should this bill be passed it will sanction more - not less - pollution in our waterways, without a tested alternative approach, and it will undermine the foundation of our booming outdoors economy - not responsibly steward local and corporate coffers. Worse water quality and a lack of science-based water quality pollution control will create more pollution problems in our rivers, threatening the tens of thousands of Montana jobs, thousands of Montana business, and our Outdoors Heritage, all of which depend directly on clean water and healthy rivers.

For all these reasons Upper Missouri Waterkeeper opposes SB 358 and requests this Committee vote down and table this dirty water bill.

Files:

Testify via Zoom: Yes

Zoom Method: Computer



# **2021 Session**

## **Additional Documents**

**May include the following:**

- **Business Report**
- **Roll Call - Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**
  - Petitions, Pamphlets, Leaflets, Brochures, Emails, all documents given to Committee Secretary 24 hours after the meeting adjourned.**

**The original exhibit/items are on file at the Montana Historical Society and may be viewed there.**

## **BUSINESS REPORT**

### **MONTANA HOUSE OF REPRESENTATIVES 67th LEGISLATURE - REGULAR SESSION**

#### **HOUSE NATURAL RESOURCES COMMITTEE**

**Date:** Monday, March 29, 2021

**Place:** Capitol

**Time:** 3:00 PM

**Room:** 172

#### **BILLS and RESOLUTIONS HEARD:**

HB 648 - Generally revise natural resource laws - Rep. Joshua Kassmier (R)

SB 358 - Repeal numeric nutrient standards for water quality - Sen. John Esp (R)

#### **EXECUTIVE ACTION TAKEN:**

SB 29 - Be Tabled

SB 40 - Be Concurred In

SB 136 - Be Concurred In

SB 165 - Be Tabled

SB 233 - Be Concurred In

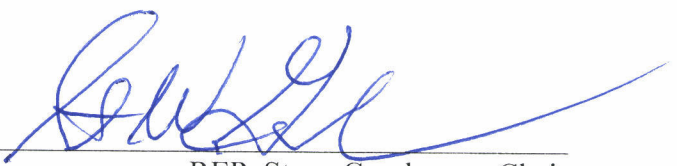
SB 249 - Be Concurred In

SB 328 - Be Concurred In As Amended

SB 348 Be Concurred In

SB 352 Be Tabled

#### **Comments:**



REP. Steve Gunderson, Chair



*The Big Sky Country*

## MONTANA HOUSE OF REPRESENTATIVES

### NATURAL RESOURCES COMMITTEE

### ROLL CALL

DATE: 3-29-2021

| NAME                      | PRESENT | ABSENT/EXCUSED |
|---------------------------|---------|----------------|
| CHAIR GUNDERSON           | ✓       |                |
| VICE CHAIR RHONDA KNUDSEN | ✓       |                |
| VICE CHAIR CURDY          | ✓       |                |
| REP. FARRIS-OLSEN         |         | ✓              |
| REP. FIELDER              | ✓       |                |
| REP. FITZGERALD           | ✓       |                |
| REP. FRANCE               | ✓       |                |
| REP. GALLOWAY             | ✓       |                |
| REP. GIST                 | ✓       |                |
| REP. MALONE               | ✓       |                |
| REP. MARLER               |         | ✓              |
| REP. NOLAND               |         | ✓              |
| REP. PUTNAM               | ✓       |                |
| REP. WALSH                | ✓       |                |
| REP. WEATHERWAX           | ✓       |                |

15 MEMBERS

-----  
COMMITTEE FILE COPY

## BILL TABLED NOTICE

### HOUSE NATURAL RESOURCES COMMITTEE

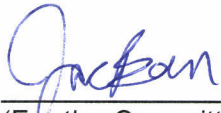
The HOUSE NATURAL RESOURCES COMMITTEE TABLED

**SB 29 - Revise weather modification and control laws - Sen. Bruce Gillespie (R)**

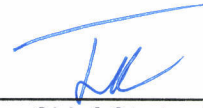
**SB 165 - Generally revise laws related to the department of environmental quality - Sen. Carl Glimm (R)**

**SB 352 - Clarify objections to water rights - Sen. John Esp (R)**

by motion, on **Monday, March 29, 2021** (PLEASE USE THIS ACTION DATE IN LAWS BILL STATUS).



\_\_\_\_\_  
(For the Committee)



\_\_\_\_\_  
(For the Chief Clerk of the House)

6:07pm

(Time)

3/29

(Date)

March 29, 2021 (5:53pm)

Jacquelynn Bomgardner, Secretary

Phone: 4067813369



## HOUSE STANDING COMMITTEE REPORT

March 29, 2021

Page 1 of 1

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **Senate Bill 328** (second house second reading copy -- tan) **be concurred in as amended.**

Signed: \_\_\_\_\_

*Representative Steve Gunderson, Chair*

To be carried by Representative Tom France

### And, that such amendments read:

1. Page 14, line 24.

Strike: "may"

Insert: "shall"

2. Page 14, line 27.

Following: "82-4-231(10)(k);"

Strike: "or"

3. Page 15, line 2.

Following: "survey"

Insert: "; or

(C) the permittee has not successfully completed all reclamation activities, including water replacement, in the designated area"

- END -

### Committee Vote:

**Yes 12, No 3**

Fiscal Note Required ☐

SB0328001SC19692.h1c

3.31.21  
SR 12:51pm  
(F)



## HOUSE STANDING COMMITTEE REPORT

March 29, 2021

Page 1 of 1

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **Senate Bill 40** (second house second reading copy -- tan) **be concurred in.**

Signed: \_\_\_\_\_

*Representative Steve Gunderson, Chair*

To be carried by Representative Willis Curdy

- END -

**Committee Vote:**

**Yes 15, No 0**

Fiscal Note Required ☐

SB0040001SC16496.h1c

3-30-21  
JR 11:28AM  
(2)



## HOUSE STANDING COMMITTEE REPORT

March 29, 2021

Page 1 of 1

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **Senate Bill 136** (second house second reading copy -- tan) **be concurred in.**

Signed: \_\_\_\_\_

*Representative Steve Gunderson, Chair*

To be carried by Representative Steven Galloway

- END -

**Committee Vote:**

**Yes 15, No 0**

Fiscal Note Required ☐

SB0136001SC19673.hlc

3-30-21  
TR 11:29 AM  
Ⓢ





## HOUSE STANDING COMMITTEE REPORT

March 29, 2021

Page 1 of 1

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **Senate Bill 233** (second house second reading copy -- tan) **be concurred in.**

Signed: \_\_\_\_\_

*Representative Steve Gunderson, Chair*

To be carried by Representative Brian Putnam

- END -

**Committee Vote:**

**Yes 14, No 1**

Fiscal Note Required ☐

SB0233001SC19617.h1c

3-30-21  
JP 11:30AM  
(F)



## HOUSE STANDING COMMITTEE REPORT

March 29, 2021

Page 1 of 1

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **Senate Bill 249** (second house second reading copy -- tan) **be concurred in.**

Signed: \_\_\_\_\_

*Representative Steve Gunderson, Chair*

To be carried by Representative Rhonda Knudsen

- END -

**Committee Vote:**

**Yes 15, No 0**

Fiscal Note Required ☐

SB0249001SC18718.h1c

3.30.21  
TR 11:34AM  
②



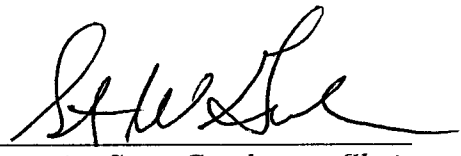
## HOUSE STANDING COMMITTEE REPORT

March 29, 2021

Page 1 of 1

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **Senate Bill 348** (second house second reading copy -- tan) **be concurred in.**

Signed:   
*Representative Steve Gunderson, Chair*

To be carried by Representative Kenneth Walsh

- END -

**Committee Vote:**

**Yes 15, No 0**

Fiscal Note Required ☐

SB0348001SC19685.hlc

3-30-21  
JR 11:33 AM  
(F)



*The Big Sky Country*

## MONTANA HOUSE OF REPRESENTATIVES

### NATURAL RESOURCES COMMITTEE

#### ROLL CALL VOTE

BILL NUMBER SB 352

DATE 3-29-2021

MOTION Be Tabled

| NAME                       | YES | NO | PROXY |
|----------------------------|-----|----|-------|
| VICE CHAIR, RHONDA KNUDSEN | ✓   |    |       |
| VICE CHAIR, CURDY          | ✓   |    |       |
| REP. NOLAND                | ✓   |    | ✓     |
| REP. MALONE                |     | ✓  |       |
| REP. FARRIS-OLSEN          | ✓   |    |       |
| REP. FIELDER               |     | ✓  |       |
| REP. GIST                  | ✓   |    |       |
| REP. GALLOWAY              |     | ✓  |       |
| REP. MARLER                | ✓   |    |       |
| REP. PUTNAM                | ✓   |    |       |
| REP. FRANCE                | ✓   |    |       |
| REP. FITZGERALD            |     | ✓  |       |
| REP. WEATHERWAX            | ✓   |    |       |
| REP. WALSH                 | ✓   |    |       |
| CHAIR, GUNDERSON           | ✓   |    |       |

15 MEMBERS



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## MONTANA HOUSE OF REPRESENTATIVES

### NATURAL RESOURCES COMMITTEE

### ROLL CALL VOTE

BILL NUMBER SB 328

DATE 3-29-2021

MOTION Do Pass Amendment 328.1.1

| NAME                       | YES | NO | PROXY |
|----------------------------|-----|----|-------|
| VICE CHAIR, RHONDA KNUDSEN |     | ✓  |       |
| VICE CHAIR, CURDY          | ✓   |    |       |
| REP. NOLAND                |     | ✓  | ✓     |
| REP. MALONE                |     | ✓  |       |
| REP. FARRIS-OLSEN          | ✓   |    |       |
| REP. FIELDER               |     | ✓  |       |
| REP. GIST                  | ✓   |    |       |
| REP. GALLOWAY              |     | ✓  |       |
| REP. MARLER                | ✓   |    | ✓     |
| REP. PUTNAM                | ✓   |    |       |
| REP. FRANCE                | ✓   |    |       |
| REP. FITZGERALD            | ✓   |    |       |
| REP. WEATHERWAX            | ✓   |    |       |
| REP. WALSH                 |     | ✓  |       |
| CHAIR, GUNDERSON           |     | ✓  |       |

15 MEMBERS



*The Big Sky Country*

## MONTANA HOUSE OF REPRESENTATIVES

### NATURAL RESOURCES COMMITTEE

#### ROLL CALL VOTE

BILL NUMBER SB 328

DATE 3-29-2021

MOTION Be Concurred in As Amended

| NAME                       | YES | NO | PROXY |
|----------------------------|-----|----|-------|
| VICE CHAIR, RHONDA KNUDSEN | ✓   |    |       |
| VICE CHAIR, CURDY          | ✓   |    |       |
| REP. NOLAND                | ✓   |    | ✓     |
| REP. MALONE                |     | ✓  |       |
| REP. FARRIS-OLSEN          | ✓   |    |       |
| REP. FIELDER               |     | ✓  |       |
| REP. GIST                  | ✓   |    |       |
| REP. GALLOWAY              | ✓   |    |       |
| REP. MARLER                | ✓   |    | ✓     |
| REP. PUTNAM                | ✓   |    |       |
| REP. FRANCE                | ✓   |    |       |
| REP. FITZGERALD            | ✓   |    |       |
| REP. WEATHERWAX            | ✓   |    |       |
| REP. WALSH                 | ✓   |    |       |
| CHAIR, GUNDERSON           |     | ✓  |       |

15 MEMBERS



*The Big Sky Country*

## MONTANA HOUSE OF REPRESENTATIVES

### NATURAL RESOURCES COMMITTEE

### ROLL CALL VOTE

BILL NUMBER SB 165

DATE 3-29-2021

MOTION Be Tabled

| NAME                       | YES | NO | PROXY |
|----------------------------|-----|----|-------|
| VICE CHAIR, RHONDA KNUDSEN |     | ✓  |       |
| VICE CHAIR, CURDY          | ✓   |    |       |
| REP. NOLAND                |     | ✓  | ✓     |
| REP. MALONE                |     | ✓  |       |
| REP. FARRIS-OLSEN          | ✓   |    |       |
| REP. FIELDER               |     | ✓  |       |
| REP. GIST                  |     | ✓  |       |
| REP. GALLOWAY              |     | ✓  |       |
| REP. MARLER                | ✓   |    | ✓     |
| REP. PUTNAM                | ✓   |    |       |
| REP. FRANCE                | ✓   |    |       |
| REP. FITZGERALD            | ✓   |    |       |
| REP. WEATHERWAX            | ✓   |    |       |
| REP. WALSH                 | ✓   |    |       |
| CHAIR, GUNDERSON           |     | ✓  |       |

15 MEMBERS



*The Big Sky Country*

## MONTANA HOUSE OF REPRESENTATIVES

### NATURAL RESOURCES COMMITTEE

#### ROLL CALL VOTE

BILL NUMBER SB 29

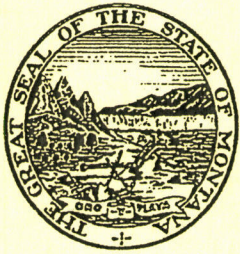
DATE 3-29-2021

MOTION Be Tabled

| NAME                       | YES | NO | PROXY |
|----------------------------|-----|----|-------|
| VICE CHAIR, RHONDA KNUDSEN | ✓   |    |       |
| VICE CHAIR, CURDY          | ✓   |    |       |
| REP. NOLAND                | ✓   |    | ✓     |
| REP. MALONE                | ✓   |    |       |
| REP. FARRIS-OLSEN          | ✓   |    |       |
| REP. FIELDER               | ✓   |    |       |
| REP. GIST                  | ✓   |    |       |
| REP. GALLOWAY              | ✓   |    |       |
| REP. MARLER                | ✓   |    | ✓     |
| REP. PUTNAM                |     | ✓  |       |
| REP. FRANCE                |     | ✓  |       |
| REP. FITZGERALD            |     | ✓  |       |
| REP. WEATHERWAX            | ✓   |    |       |
| REP. WALSH                 |     | ✓  |       |
| CHAIR, GUNDERSON           |     | ✓  |       |

15 MEMBERS





*The Big Sky Country*

MONTANA HOUSE OF REPRESENTATIVES  
AUTHORIZED  
COMMITTEE PROXY  
67<sup>TH</sup> LEGISLATIVE SESSION

I request to be excused from the Natural Resources Committee.

I desire to leave my proxy vote with Rep. Rhonda Knudsen.

PLEASE USE PEN

| BILL          | MOTION<br>(Include AMENDMENT #) | AYE | NO |
|---------------|---------------------------------|-----|----|
| Amend<br>SB29 | 29.2.1                          | y   |    |
| SB29          | Table                           | y   |    |
| SB40          | do concur                       | y   |    |
|               |                                 |     |    |
| SB136         | do concur                       | y   |    |
|               |                                 |     |    |
| Amend<br>1165 | do pass                         | y   |    |
| SB165         | Table                           |     | N  |
|               |                                 |     |    |
| SB233         | do concur                       | y   |    |
|               |                                 |     |    |
| SB249         | do concur                       | y   |    |

| BILL            | MOTION<br>(Include AMENDMENT #) | AYE | NO |
|-----------------|---------------------------------|-----|----|
| Amend.<br>SB328 | do pass                         |     | N  |
| SB328           | do concur                       | y   |    |
|                 |                                 |     |    |
| SB348           | do concur                       | y   |    |
|                 |                                 |     |    |
| Amend<br>SB352  | do pass                         |     | N  |
| SB352           | table                           | y   |    |
|                 |                                 |     |    |
|                 |                                 |     |    |
|                 |                                 |     |    |
|                 |                                 |     |    |
|                 |                                 |     |    |

I authorize my vote to be matched with that of Rep. Rhonda Knudsen, Vice Chair  
for any amendments proposed on this date.

Rep. Mark Noland  
(Signature)

Rep. Noland  
(Print Name)

03/29/2021  
(Meeting Date)





*The Big Sky Country*

# MONTANA HOUSE OF REPRESENTATIVES

## AUTHORIZED COMMITTEE PROXY

### 67<sup>TH</sup> LEGISLATIVE SESSION

I request to be excused from the Natural Resources Committee.

I desire to leave my proxy vote with Rep. Curdy

PLEASE USE PEN

| BILL   | MOTION<br>(Include AMENDMENT #)        | AYE | NO | BILL   | MOTION<br>(Include AMENDMENT #) | AYE | NO |
|--------|----------------------------------------|-----|----|--------|---------------------------------|-----|----|
| SB 29  | Amendment <sup>Do Pass</sup> SB 29.2.1 | X   |    | SB 352 | Amendment 352.2.1               | X   |    |
| SB 29  | Table                                  | X   |    | SB 352 | Table                           | X   |    |
| SB 40  | Do Concure                             | X   |    |        |                                 |     |    |
| SB 136 | Do Concure                             | X   |    |        |                                 |     |    |
| SB 165 | Amend 165.1.1 Do Pass                  | X   |    |        |                                 |     |    |
| SB 165 | Amend 165.1.2 Do Pass                  | X   |    |        |                                 |     |    |
| SB 165 | Table                                  | X   |    |        |                                 |     |    |
| SB 293 | Do Concure                             | X   |    |        |                                 |     |    |
| SB 249 | Do Concure                             | X   |    |        |                                 |     |    |
| SB 328 | Amend 328.6.1 Do Pass                  | X   |    |        |                                 |     |    |
| SB 329 | Do Concure                             | X   |    |        |                                 |     |    |
| SB 346 | Do Concure                             | X   |    |        |                                 |     |    |

I authorize my vote to be matched with that of Rep. Curdy  
for any amendments proposed on this date.

Rep. Marilyn Marler  
(Signature)

Marilyn Marler  
Rep. Curdy  
(Print Name)

3-29-2021  
(Meeting Date)



## **2021 Legislative Session**

# **WITNESS STATEMENTS**

**The following is an assortment of  
documents that are witness  
statements.**

**“A witness statement is a signed document  
recording the evidence of a witness. A  
definition “a written statement signed by a  
person which contains the evidence which that  
person would be allowed to give orally.”**

**LEG Committee-House Natural Resource testimony**

---

**From:** leg-noreply@mt.gov  
**Sent:** Friday, March 26, 2021 11:44 AM  
**To:** LEG Applications Email Backup; LEG Committee-House Natural Resource testimony  
**Subject:** Public Comment for Bill SB-358: Repeal numeric nutrient standards for water quality  
2021-03-29 03:00 PM - (H) Natural Resources Successfully Submitted on 03-26-21 11:43

**Details:**

Bill: SB-358: Repeal numeric nutrient standards for water quality 2021-03-29 03:00 PM - (H) Natural Resources

Position: Opponent

Representing an Entity/Another Person: Yes

Organization: League of Women Voters Montana

Name: Nancy Leifer

Email: nancleifer@gmail.com

Phone: (406) 207-9114

City, State: Missoula, Montana

Written Statement: Testimony SB358

Submitted March 26 to House Natural Resources Committee Nancy Leifer, on behalf of the League of Women Voters Montana

The League of Women Voters of Montana is a non-partisan organization, founded 101 years ago, that takes positions on issues after a process of study, discussion and consensus. The League opposes SB 358.

The League supports the preservation of the physical, chemical, and biological integrity of the ecosystem and maximum protection of public health and the environment. SB 358 would repeal nutrient standards for Montana rivers and thereby threaten water quality in Montana's pristine waters. With the warming of the climate, nutrient standards are even more critical in preventing biological degradation of Montana's water ecosystems.

Please oppose SB 358. Thank you for this opportunity to submit testimony.

Files:

Testify via Zoom: No

Zoom Method: N/A

**LEG Committee-House Natural Resource testimony**

---

**From:** leg-noreply@mt.gov  
**Sent:** Friday, March 26, 2021 11:03 AM  
**To:** LEG Applications Email Backup; LEG Committee-House Natural Resource testimony  
**Subject:** Public Comment for Bill HB-648: Generally revise natural resource laws 2021-03-29 03:00 PM - (H) Natural Resources Successfully Submitted on 03-26-21 11:02

**Details:**

Bill: HB-648: Generally revise natural resource laws 2021-03-29 03:00 PM - (H) Natural Resources

Position: Opponent

Representing an Entity/Another Person: No

Organization: N/A

Name: Hannah P Hernandez

Email: precambrianmt@hotmail.com

Phone: (406) 638-1149

City, State: Troy, MT

Written Statement: To House Natural Resources Committee,

Oppose HB 648.

Instead encouraging continued reliance on fossil fuels and development of a resource that is contributing to climate change it would be prudent to have the bureau of mines and geology assess how to reclaim, restore, and rejuvenate sites impacted from fossil fuel extraction and how to develop geothermal energy resources in the state. This bill does nothing to help Montana become a leader in the 21st century and develop renewable resources in the state.

Vote NO HB 648.

Thank you.

Hannah Hernandez

Files:

Testify via Zoom: No

Zoom Method: N/A



**BACKCOUNTRY**  
HUNTERS & ANGLERS  
MONTANA

**WITNESS  
STATEMENT**

March 29, 2021

Chairman Gunderson and members of the House Natural Resources Committee,

The Montana Chapter of Backcountry Hunters & Anglers submits this letter for the record in opposition to SB 358.

Montana BHA opposes SB 358 because it aims to allow more nutrient pollution in our waterways. On its face, the bill eliminates the existing numeric nutrient standards and forces the Montana Department of Environmental Quality (MDEQ) to promulgate new rules pursuant to the reduced water quality criteria stated in the Bill. More specifically, the bill would mandate MDEQ to weigh the addition of new nitrogen and phosphorus pollution in relation to the amount of pollution already existing in the source. In other words, if a stream is already impaired with nitrogen and phosphorus pollution, it would be possible for new polluters to come along and receive a permit to impair the stream even further.

Nutrient pollution is caused by excess nitrogen and phosphorus in the air and water and is one of America's most widespread, costly and challenging environmental problems. These naturally occurring nutrients play an important part in aquatic ecosystems, but too much nitrogen and phosphorus in the water causes algae to grow faster than ecosystems can handle, leading to harmful algal blooms. Significant increases in algae harm not just water quality, but important wildlife habitats and food resources. Large growths of algae, as seen recently in many of Montana's rivers and streams, can severely reduce or eliminate oxygen in the water, leading to illnesses or death of large numbers of fish.



---

[WWW.BACKCOUNTRYHUNTERS.ORG/MONTANA\\_BHA](http://WWW.BACKCOUNTRYHUNTERS.ORG/MONTANA_BHA)  
[MONTANA@BACKCOUNTRYHUNTERS.ORG](mailto:MONTANA@BACKCOUNTRYHUNTERS.ORG)

Unfortunately, this is already occurring in such famous Montana streams such as the Gallatin, Yellowstone, Clark Fork and Bitterroot. The waterways are not only an important part of our state's recreational heritage, but they are critical drivers of an enormous economic sector. Fishing outfitting and tourism alone brings Montana more than \$100 million per year. In fact, according to the UM Tourism Institute, over 39% of all tourists who hired an outdoor recreation service in Montana participated in rafting, floating, canoeing and kayaking, making them the highest-ranking activities in the state.

We urge you to vote no on SB 358 because protecting water quality in Montana is not just important to our environment, but also to our economy.

Respectfully,



John B. Sullivan III

Chairman / Montana Chapter  
Backcountry Hunters & Anglers  
[montana@backcountryhunters.org](mailto:montana@backcountryhunters.org)



[WWW.BACKCOUNTRYHUNTERS.ORG/MONTANA\\_BHA](http://WWW.BACKCOUNTRYHUNTERS.ORG/MONTANA_BHA)  
[MONTANA@BACKCOUNTRYHUNTERS.ORG](mailto:MONTANA@BACKCOUNTRYHUNTERS.ORG)

①

## HB 648 - Generally revise natural resource laws

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**



**Monday, March 29, 2021**

## SB 358 - Repeal numeric nutrient standards for water quality

Sponsor: **Sen. John Esp (R)**

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

# House Natural Resources Committee Testimony Requests

Meeting: 03/29/2021

| Bill   | Name                  | Position              | Location   | Email                      | Affiliation                              |
|--------|-----------------------|-----------------------|------------|----------------------------|------------------------------------------|
| HB-648 | Amy Seaman            | Opponent              | Helena     | aseaman@mtaudubon.org      | Montana Audubon                          |
| HB-648 | Derf Johnson          | Opponent              | Helena     | djohnson@meic.org          | Montana Environmental Information Center |
| SB-358 | Kelly Lynch           | Proponent             | Helena     | kelly.lynch@mtleague.net   | Montana League of Cities and Towns       |
| SB-358 | Amy Seaman            | Opponent              | Helena     | aseaman@mtaudubon.org      | Montana Audubon                          |
| SB-358 | Derf Johnson          | Opponent              | Helena     | djohnson@meic.org          | Montana Environmental Information Center |
| SB-358 | Dr. Samuel Paul Carls | Opponent              | Bozeman    | sam.p.carlson@gmail.com    | N/A                                      |
| SB-358 | Travis Ross           | Opponent              | Missoula   | tross@missoulacounty.us    | MEHA, Msla City-Co Health Dept           |
| SB-358 | Richard Parks         | Opponent              | Gardiner   | richard@parksflyshop.com   | N/A                                      |
| SB-358 | Charles Sangmeister   | Opponent              | Nye        | lcsangmeister@nemontel.net | N/A                                      |
| SB-358 | Paul Hawks            | Opponent              | McLeod     | hawks@mtintouch.net        | N/A                                      |
| SB-358 | Sarah Zuzulock        | Opponent              | Bozeman    | sarah@zuzulockenvironmer   | N/A                                      |
| SB-358 | Jerry Iverson         | Opponent              | Big Timber | jliverson@outlook.com      | N/A                                      |
| SB-358 | Betsy Baxter          | Opponent              | Big Timber | mebaxter@hotmail.com       | N/A                                      |
| SB-358 | Vicki Watson          | Opponent              | Missoula   | h2oshed1@hotmail.com       | N/A                                      |
| SB-358 | Guy Alsentzer         | Opponent              | Bozeman    | guy@uppermissouriwaterke   | Upper Missouri Waterkeeper               |
| SB-358 | Kurt Moser            | Informational Witness | Helena     | KMoser2@mt.gov             | DEQ                                      |



# **2021 Session**

## **Additional Documents**

**May include the following:**

- **Business Report**
- **Roll Call -Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**
  - Petitions, Pamphlets, Leaflets, Brochures, Emails, all documents given to Committee Secretary 24 hours after the meeting adjourned.**

**The original exhibit/items are on file at the Montana Historical Society and may be viewed there.**

**BUSINESS REPORT**

**MONTANA HOUSE OF REPRESENTATIVES  
67th LEGISLATURE - REGULAR SESSION**

**HOUSE NATURAL RESOURCES COMMITTEE**

**Date:** Wednesday, March 31, 2021

**Place:** Capitol

**Time:** 3:00 PM

**Room:** 172

**BILLS and RESOLUTIONS HEARD:**

HB 695 - Generally revise environmental laws - Rep. Denley Loge (R)

HJ 27 - Study the funding of conservation districts - Rep. Kenneth Holmlund (R)

SB 248 - Establish student-athlete rights and protections - Sen. Ellie Boldman (D)

SB 302 - Extend authorization deadline for use of navigable riverbed - Sen. Walt Sales (R)

**EXECUTIVE ACTION TAKEN:** None

**Comments:**

A handwritten signature in black ink, appearing to read 'Steve Gunderson', is written over a horizontal line.

REP. Steve Gunderson, Chair



*The Big Sky Country*

# MONTANA HOUSE OF REPRESENTATIVES

## NATURAL RESOURCES COMMITTEE

### ROLL CALL

DATE: 3-31-2021

| NAME                      | PRESENT | ABSENT/EXCUSED |
|---------------------------|---------|----------------|
| CHAIR GUNDERSON           | ✓       |                |
| VICE CHAIR RHONDA KNUDSEN | ✓       |                |
| VICE CHAIR CURDY          | ✓       |                |
| REP. FARRIS-OLSEN         | ✓       |                |
| REP. FIELDER              | ✓       |                |
| REP. FITZGERALD           | ✓       |                |
| REP. FRANCE               |         | ✓              |
| REP. GALLOWAY             | ✓       |                |
| REP. GIST                 | ✓       |                |
| REP. MALONE               | ✓       |                |
| REP. MARLER               | ✓       |                |
| REP. NOLAND               |         | ✓              |
| REP. PUTNAM               | ✓       |                |
| REP. WALSH                | ✓       |                |
| REP. WEATHERWAX           | ✓       |                |

15 MEMBERS

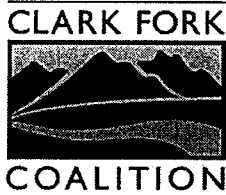
## **2021 Legislative Session**

# **WITNESS STATEMENTS**

**The following is an assortment of  
documents that are witness  
statements.**

**“A witness statement is a signed document  
recording the evidence of a witness. A  
definition “a written statement signed by a  
person which contains the evidence which that  
person would be allowed to give orally.”**

# WITNESS STATEMENT



**To:** House Natural Resource Committee  
**Re:** Clark Fork Coalition Comments on SB 358  
**Date:** Mar. 29, 2021

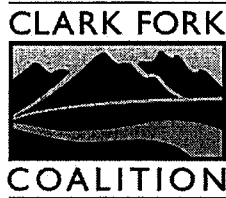
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Sponsor Esp, Chairman Gunderson and Committee Members,

The Clark Fork Coalition (CFC) opposes SB 358. We appreciate that the proponents have significantly amended this bill since its introduction in the Senate. However, as of today - March 29, 2021 - these amendments are unavailable for review by the public; therefore, we do not know the precise language of the amended bill. Based on a public meeting held by DEQ last week, we are aware of the general revisions that will apparently be introduced today. The CFC remains opposed to the anticipated amended bill for the following reasons:

First, SB 358 would eliminate science-based, numeric standards for nutrient pollution in favor of less-stringent narrative standards. The CFC feels strongly that numeric nutrient criteria (NNC) play a key role important role in protecting our water resources, and we know from experience on the Clark Fork River that NNC are necessary to protect our river from chronic nutrient issues. Numeric water quality criteria were developed for a reason, i.e. to control nutrient pollution in Montana's watersheds using site-specific data. Removing NNC will result in excessive nitrogen and phosphorus pollution in Montana's rivers, streams and lakes, harming human health, ecosystems, property values and our economy.

Second, SB 358 would eliminate Montana's current non-degradation standards for nutrient pollution. As contemplated by the proponents, nutrient degradation standards will occur only when a response variable has just surpassed a harm-to-use threshold (e.g. 150 mg Chla/m<sup>2</sup>). On the ground, this statutory change throws out our existing, proactive approach to nutrient management in favor of a "crisis management" regime where we attempt to address site-specific nutrient problems only after the problem has gotten out of hand. This makes little scientific or economic sense, as it is



far cheaper to prevent nutrient pollution problems than to try to fix them after they happen.

Finally, it is difficult to accept SB 358's new "adaptive management" regime when there are few (if any) details on how this new scheme will be implemented statewide. Most of the key details of this program are either unclear or simply left to future rulemaking. In addition, because SB 358 has no fiscal note, there is no way to tell how (or if) the proposed adaptive management plans will be funded. Developing adaptive management regimes for nutrient pollution by watershed will be very expensive, and smaller, rural Montana communities will be unable to finance these changes without assistance. Without a fiscal note, SB 358's price tag is an open question.

For the above-listed reasons, we urge a 'no' vote on SB 358.

Thank you,

Andrew Gorder

Legal Director  
Clark Fork Coalition  
andrew@clarkfork.org  
406-542-0539 ext. 202





To: House Natural Resources Committee

From: Katie Garcin-Forba, Acting Water Quality Division Administrator

Copy: Chris Dorrington, Director, and George Mathieus, Deputy Director

Date: March 30, 2021

RE: SB 358 - Informational Response to Questions

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As requested, we have provided information detailing the questions received and reviewed by the Water Quality Division for SB 358 - Repeal numeric nutrient standards for water quality.

1. What is the trend for variances? Who issues variances?
  - a. *Changes in EPA regulations has made variance opportunities more limited. Thirty-six communities across Montana have been approved for a General Nutrient Variance. One community has been approved for an Individual Nutrient Variance. The MPDES program has implemented approximately 16 variances into permits. Variance eligibility is determined through the permitting process; however, each variance must be approved by EPA prior to incorporation into a permit. The bill eliminates the numeric nutrient criteria, and in turn the General Variance would also be eliminated.*
2. Can DEQ develop a cost estimate for developing standards under the bill?
  - a. *The Department believes this question is not about developing further standards, since DEQ-12A would be eliminated by the bill; rather, this question seems to be related to increased monitoring costs to the permittee associated with the bill. Please see the cost estimate provided below in Question 10.*
3. Why is Missoula County opposed to the bill?
  - a. *The Department is unsure of the specifics behind the County's opposition and is not able to provide any information. However, at the hearing there was concern the bill would eliminate numeric nutrient and chlorophyll-a standards on the Clark Fork River. This is not the case, and those numeric standards will remain in place after the law change because they reside outside of Circular DEQ-12A (they are found at ARM 17.30.631).*

4. What does the Department have for a baseline for state water? How will the Department determine when to make immediate changes if degradation occurs as a result of the new bill provisions?

- a. *In development of the numeric nutrient criteria the Department developed a publication including all of the then-available nutrient water quality data from available databases (Suplee et al. 2007). It gives a comprehensive picture of nutrient water quality for reference and non-reference streams across the state. From this work one can track regional-scale nutrient changes, and if a specific waterbody is of interest it can be queried from the source database and its changes tracked over time. The Department can provide the publication upon request (see Table 6 from the publication at the bottom of this memo).*

5. What is the difference between point source and nonpoint source pollution?

- a. *Point source pollution comes from a single, identifiable source and is regulated with a permit. Nonpoint sources of pollution come from sources scattered across the landscape, like runoff from agricultural fields or sediment from unpaved forest roads and are not regulated. Instead, nonpoint source pollution clean-up is voluntary.*

*Each year the Department's nonpoint source program awards roughly 1 million dollars in federal grant money to fund nonpoint source pollution reduction projects, which funds roughly 5-10 projects a year around the state and is not sufficient to address all nonpoint source issues. Adaptive management plans would look at the total amount of pollution from point source and nonpoint source – therefore, if point sources are allowed an increased discharge, additional reductions would have to come from nonpoint sources in order to meet standards, which would require more nonpoint source funding – targeted at each Adaptive Management Plan watershed.*

6. How difficult is it to treat for, and achieve standards, by any discharger?

- a. *The numeric water quality standards found in DEQ Circular 12A are difficult to achieve with currently available technology. Effluent limits incorporated into MPDES permits based on the variance or the water quality standards have varying degrees of difficulty but do represent a challenge for some dischargers.*

*DEQ wastewater technical assistance staff and consulting operators and engineers provided advanced training and individual facility reports for nutrient optimization to 35 mechanical and 50 lagoon systems in Montana over the past seven years. Facilities that have implemented recommended operational changes to optimize nutrient removal have achieved modest results.*

*Challenges to optimization range from funding availability for implementing operational changes (e.g. sludge removal in lagoons), operator consistency, recruitment and retention (i.e. not all facilities have full-time operators and many have high turnover that makes it difficult to implement changes) to overall acceptance of operational changes having success in achieving nutrient reduction (i.e. institutional resistance). DEQ continues to provide outreach, education and professional development in coordination with other service providers.*

*Montana's cold climate also makes treatment possibilities especially challenging in that many facilities cannot effectively remove Nitrogen in winter and throughout*

*colder months; especially with lagoon systems.*

7. What are the issues with treatment technology availability?
  - a. *Each of the following alternatives have increasing levels of cost associated with construction and operation. The need for operational experience and expertise poses a greater issue than cost associated with the more advanced technologies.*
    1. *Conventional Treatment - like Facultative Lagoons. These are generally selected as the lowest form of treatment:*
      - *provides for settling of solids, reduction of carbon sources and clarification*
      - *does not provide for aggressive nutrient removal (either nitrogen or phosphorus)*
    2. *Advanced oxidation Treatment - like Aerated Lagoons, or Activated Sludge Mechanical Plants. Generally selected when there is an ammonia limit in the permit.*
      - *does convert ammonia in waste to nitrite/nitrate for some nutrient reductions*
    3. *Biological Nutrient Removal (BNR) Facilities - mechanical plants that recycle flows to remove nutrients or use chemical precipitation of nutrients. Normally selected where this is a nitrate limit in a permit.*
      - *Can reduce Total Nitrogen and Total Phosphorus levels to approximately 1.0 mg/L and 0.05 mg/L respectively*
    4. *Advanced Treatment Alternatives - this includes technologies like BNR with membrane separation, Reverse Osmosis and advanced oxidation-based disinfection steps.*
      - *Can provide for exceptional effluent quality when optimization is applied.*
      - *Can result in Total Nitrogen and Total Phosphorus levels that are lower than BNR alone.*
8. Provide a summary of water bodies that are currently meeting nutrient standards.
  - a. *DEQ carried out an analyses circa 2012 based on probabilistic data collection of stream nutrient data across Montana (per EMAP methods). Comparing those data to the currently-adopted nutrient standards in Circular DEQ-12A, about 70-80% of stream miles statewide currently meet the total phosphorus standards, and 85-90% of stream miles statewide currently meet the total nitrogen standards. These findings were presented to the Board in advance of adoption of the nutrient standards in 2014.*
9. What percentage of water bodies are impaired due to nutrients? What percentage of those that have completed nutrient TMDLs?
  - a. *42% of river miles and 82% of lake acres have been assessed in Montana. Of the waterbodies assessed, there are 605 nutrient impairments and 288 TMDLs have been written to address those nutrient impairments. Therefore 48% of the identified nutrient impairments have been addressed by TMDLs. Currently, 30.4% of the impairment listings on the EPA Attains site for Montana are related to nutrients; see [https://ofinpub.epa.gov/waters10/attains\\_state.control?p\\_state=MT#causes\\_303d](https://ofinpub.epa.gov/waters10/attains_state.control?p_state=MT#causes_303d)*
10. What is a cost estimate for permittees to conduct monitoring related to the bill?
  - a. *To inform the development of an adaptive management plan, monitoring to characterize ambient water quality conditions and nutrient source contributions*

throughout the watershed of a receiving water would require multiple sites. Fewer sites may suffice in watersheds that are smaller or have fewer sources, whereas more sites may be necessary to characterize larger or more complex watersheds. Sites would characterize the mainstem of the receiving water upstream and downstream from the permitted discharge and, for example, major tributaries, concentrated nonpoint source areas, and other point sources. A synoptic sampling design in which all sites are visited within a short period of time would likely be applied. Multiple visits per year over two or more years would likely be necessary to characterize conditions (e.g., quarterly, or during targeted hydroperiods such as spring runoff plus baseflow conditions during the summer growing season).

Staff resources required to conduct the monitoring would depend on number of sites, types of samples, and travel distance. Analytical costs could include standard suite of nutrients (TPN, TP, NO<sub>2</sub>+3, NH<sub>3</sub>+4, SRP) plus benthic algae (chlorophyll-a and ash-free dry mass) and possibly others. Flow data would be necessary for loading calculations. Additional costs may be likely, for example, for indirect contracting costs, statistical analysis, modeling support, training and quality assurance, etc.

This monitoring budget estimate reflects an estimated cost for monitoring to inform development of an adaptive management plan. Long-term monitoring costs would also likely be incurred by the permittee and are not reflected here as scope and frequency is undetermined.

Permittees commonly incur the cost of nutrient sample analysis, but the addition of chlorophyll-a, ash-free dry mass or other response variables (e.g., dissolved oxygen, pH) would present a large cost increase for sample analysis, staff time, and equipment.

| Monitoring Budget Estimate | Smaller, less complex watershed                 |                 | Larger, more complex watershed                   |                 |
|----------------------------|-------------------------------------------------|-----------------|--------------------------------------------------|-----------------|
|                            | Estimates                                       | Cost            | Estimates                                        | Cost            |
| Lab analysis               | 10 sites x 8 visits x \$190                     | \$15,200        | 25 sites x 8 visits x \$190                      | \$38,000        |
| Shipping                   | \$20 x 2 coolers x 8 events                     | \$320           | \$20 x 5 coolers x 8 events                      | \$800           |
| Equipment                  | algae monitoring, field meters, etc.            | \$10,000        | algae monitoring, field meters, etc.             | \$10,000        |
| Field technicians          | \$35 per hour * 2 people * 60 hours             | \$4,200         | \$35 per hour * 2 people * 120 hours             | \$8,400         |
| Mileage                    | 0.56 per mile x 300 miles x 8 events            | \$1,344         | 0.56 per mile x 600 miles x 8 events             | \$2,688         |
| Lodging                    | \$96 per night x 6 nights x 2 people x 8 events | \$9,216         | \$96 per night x 12 nights x 2 people x 8 events | \$18,432        |
| Per diem                   | \$30.5 per day x 7.5 days x 2 people x 8 events | \$3,660         | \$30.5 per day x 15 days x 2 people x 8 events   | \$7,320         |
| Other                      | 10% increase                                    | \$4,394         | 10% increase                                     | \$8,564         |
| <b>TOTAL</b>               |                                                 | <b>\$48,334</b> |                                                  | <b>\$94,204</b> |

Smaller, less complex watershed estimate 10 sites; larger, more complex watershed estimate 25 sites.

Estimate 4 visits over two years = 8 visits per site.

Estimate 1.5 week or 3 weeks.

\$190 analytical cost estimate: TPN (\$20), TP (\$16), NO<sub>2</sub>+3 (\$20), NH<sub>3</sub>+4 (\$12), SRP (\$16), sample handling (\$2), chlorophyll-a (\$52), ash-free dry mass (\$52).

# 11. Would more streams be listed under the narrative versus the current numeric approach?

- a. *The nutrient assessment methodology was developed under the narrative standards in 2011, so there is no reason to think it won't work under the narratives again. Using this methodology the Department does not have to prioritize phosphorus for impairment listing decisions (that only applies to permits). We will have to revisit the relative importance of numeric exceedances vs. response-variable exceedances in some of the level II decisions, to make sure they are weighted in accordance with the new law. Our review suggests that, with those changes, there will be somewhat fewer listings than currently since greater weight would be placed on the response*

*variables and somewhat less on the numeric nutrient values in our technical support document (Suplee and Watson 2013).*

Please let us know if you require additional information.

Regards,

Attachment: *Table 6 (Suplee et al. 2007)*

TABLE 6. Nutrient Concentrations (mg/L) in Reference and Non-reference Populations (All Seasons)  
for Selected Percentiles of the Frequency Distributions. Data Are Organized by Level III Ecoregion\*

| Nutrient Group                                                                                           | Northern Rockies |       |       |               |       |       |           |       |       | Middle Rockies |       |       |           |       |       |               |       |       | Canadian Rockies |       |       |               |       |       |           |       |       | Northwestern Glaciated Plains |       |       |           |       |       |               |       |       | Northwestern Great Plains |       |       |  |  |  |  |  |  |
|----------------------------------------------------------------------------------------------------------|------------------|-------|-------|---------------|-------|-------|-----------|-------|-------|----------------|-------|-------|-----------|-------|-------|---------------|-------|-------|------------------|-------|-------|---------------|-------|-------|-----------|-------|-------|-------------------------------|-------|-------|-----------|-------|-------|---------------|-------|-------|---------------------------|-------|-------|--|--|--|--|--|--|
|                                                                                                          | Reference        |       |       | Non-Reference |       |       | Reference |       |       | Non-Reference  |       |       | Reference |       |       | Non-Reference |       |       | Reference        |       |       | Non-Reference |       |       | Reference |       |       | Non-Reference                 |       |       | Reference |       |       | Non-Reference |       |       |                           |       |       |  |  |  |  |  |  |
|                                                                                                          | 25th             | 50th  | 75th  | 25th          | 50th  | 75th  | 25th      | 50th  | 75th  | 25th           | 50th  | 75th  | 25th      | 50th  | 75th  | 25th          | 50th  | 75th  | 25th             | 50th  | 75th  | 25th          | 50th  | 75th  | 25th      | 50th  | 75th  | 25th                          | 50th  | 75th  | 25th      | 50th  | 75th  |               |       |       |                           |       |       |  |  |  |  |  |  |
| (a) All-observations database                                                                            |                  |       |       |               |       |       |           |       |       |                |       |       |           |       |       |               |       |       |                  |       |       |               |       |       |           |       |       |                               |       |       |           |       |       |               |       |       |                           |       |       |  |  |  |  |  |  |
| Ammonia                                                                                                  | -                | -     | -     | 0.005         | 0.010 | 0.020 | 0.002     | 0.002 | 0.005 | 0.005          | 0.020 | 0.050 | 0.004     | 0.005 | 0.005 | 0.010         | 0.010 | 0.030 | 0.020            | 0.050 | 0.120 | 0.010         | 0.035 | 0.090 | 0.005     | 0.010 | 0.030 | 0.010                         | 0.030 | 0.040 | 0.100     | 0.005 | 0.010 | 0.030         | 0.010 | 0.030 | 0.040                     | 0.100 |       |  |  |  |  |  |  |
| NO <sub>3</sub> + NO <sub>2</sub>                                                                        | 0.008            | 0.010 | 0.020 | 0.020         | 0.050 | 0.100 | 0.005     | 0.020 | 0.040 | 0.020          | 0.080 | 0.230 | 0.004     | 0.007 | 0.010 | 0.040         | 0.050 | 0.100 | 0.001            | 0.005 | 0.050 | 0.020         | 0.050 | 0.200 | 0.020     | 0.050 | 0.200 | 0.020                         | 0.050 | 0.200 | 0.020     | 0.050 | 0.200 | 0.020         | 0.050 | 0.200 | 0.020                     | 0.050 | 0.200 |  |  |  |  |  |  |
| SRP                                                                                                      | 0.005            | 0.007 | 0.007 | 0.010         | 0.010 | 0.020 | 0.002     | 0.005 | 0.010 | 0.010          | 0.020 | 0.060 | 0.001     | 0.002 | 0.002 | 0.005         | 0.010 | 0.010 | 0.005            | 0.007 | 0.020 | 0.005         | 0.010 | 0.030 | 0.010     | 0.020 | 0.030 | 0.010                         | 0.020 | 0.030 | 0.010     | 0.020 | 0.030 | 0.010         | 0.020 | 0.030 | 0.010                     | 0.020 | 0.030 |  |  |  |  |  |  |
| TKN                                                                                                      | 0.050            | 0.050 | 0.100 | 0.100         | 0.200 | 0.400 | 0.050     | 0.200 | 0.210 | 0.130          | 0.300 | 0.500 | 0.050     | 0.050 | 0.200 | 0.050         | 0.200 | 0.600 | 0.700            | 1.000 | 1.500 | 0.400         | 0.800 | 1.200 | 0.270     | 0.575 | 1.100 | 0.400                         | 0.800 | 1.100 | 0.400     | 0.800 | 1.100 | 0.400         | 0.800 | 1.100 | 0.400                     | 0.800 | 1.100 |  |  |  |  |  |  |
| Total N                                                                                                  | -                | -     | -     | 0.130         | 0.220 | 0.370 | 0.065     | 0.085 | 0.175 | 0.050          | 0.090 | 0.280 | 0.050     | 0.060 | 0.090 | 0.060         | 0.090 | 0.240 | 0.615            | 0.760 | 1.120 | 0.600         | 0.900 | 1.400 | 0.520     | 0.780 | 1.300 | 0.510                         | 0.890 | 1.300 | 0.520     | 0.780 | 1.300 | 0.510         | 0.890 | 1.300 | 0.520                     | 0.780 | 1.300 |  |  |  |  |  |  |
| Total P                                                                                                  | 0.003            | 0.003 | 0.003 | 0.010         | 0.020 | 0.040 | 0.008     | 0.010 | 0.020 | 0.020          | 0.040 | 0.080 | 0.001     | 0.002 | 0.003 | 0.010         | 0.010 | 0.020 | 0.040            | 0.060 | 0.140 | 0.020         | 0.050 | 0.100 | 0.030     | 0.060 | 0.170 | 0.020                         | 0.040 | 0.090 | 0.030     | 0.060 | 0.170 | 0.020         | 0.040 | 0.090 | 0.030                     | 0.060 | 0.170 |  |  |  |  |  |  |
| TDP                                                                                                      | -                | -     | -     | 0.010         | 0.020 | 0.030 | 0.010     | 0.020 | 0.020 | 0.010          | 0.030 | 0.040 | -         | -     | -     | 0.020         | 0.020 | 0.020 | 0.010            | 0.030 | 0.050 | 0.010         | 0.020 | 0.030 | 0.030     | 0.060 | 0.140 | 0.010                         | 0.020 | 0.030 | 0.030     | 0.060 | 0.140 | 0.010         | 0.020 | 0.030 | 0.030                     | 0.060 | 0.140 |  |  |  |  |  |  |
| (b) All-observations database excluding data collected from streams/rivers of steeper stream order 7 & 8 |                  |       |       |               |       |       |           |       |       |                |       |       |           |       |       |               |       |       |                  |       |       |               |       |       |           |       |       |                               |       |       |           |       |       |               |       |       |                           |       |       |  |  |  |  |  |  |
| Ammonia                                                                                                  | -                | -     | -     | 0.005         | 0.010 | 0.030 | 0.002     | 0.002 | 0.005 | 0.010          | 0.020 | 0.050 | 0.004     | 0.005 | 0.005 | 0.005         | 0.010 | 0.030 | 0.020            | 0.050 | 0.120 | 0.010         | 0.040 | 0.100 | 0.005     | 0.010 | 0.030 | 0.010                         | 0.030 | 0.040 | 0.100     | 0.005 | 0.010 | 0.030         | 0.010 | 0.030 | 0.040                     | 0.100 |       |  |  |  |  |  |  |
| NO <sub>3</sub> + NO <sub>2</sub>                                                                        | 0.008            | 0.010 | 0.020 | 0.020         | 0.050 | 0.110 | 0.005     | 0.020 | 0.040 | 0.020          | 0.070 | 0.200 | 0.004     | 0.007 | 0.010 | 0.030         | 0.050 | 0.100 | 0.001            | 0.005 | 0.050 | 0.020         | 0.050 | 0.200 | 0.020     | 0.050 | 0.200 | 0.020                         | 0.050 | 0.200 | 0.020     | 0.050 | 0.200 | 0.020         | 0.050 | 0.200 | 0.020                     | 0.050 | 0.200 |  |  |  |  |  |  |
| SRP                                                                                                      | 0.006            | 0.007 | 0.007 | 0.010         | 0.010 | 0.030 | 0.002     | 0.005 | 0.010 | 0.010          | 0.030 | 0.060 | 0.001     | 0.002 | 0.002 | 0.005         | 0.005 | 0.010 | 0.005            | 0.007 | 0.020 | 0.005         | 0.010 | 0.030 | 0.010     | 0.020 | 0.030 | 0.010                         | 0.020 | 0.030 | 0.010     | 0.020 | 0.030 | 0.010         | 0.020 | 0.030 | 0.010                     | 0.020 | 0.030 |  |  |  |  |  |  |
| TKN                                                                                                      | 0.050            | 0.050 | 0.100 | 0.100         | 0.200 | 0.500 | 0.050     | 0.200 | 0.210 | 0.090          | 0.300 | 0.450 | 0.050     | 0.050 | 0.200 | 0.060         | 0.120 | 0.400 | 0.700            | 1.000 | 1.500 | 0.500         | 0.810 | 1.300 | 0.270     | 0.575 | 1.100 | 0.430                         | 0.700 | 1.100 | 0.270     | 0.575 | 1.100 | 0.430         | 0.700 | 1.100 | 0.270                     | 0.575 | 1.100 |  |  |  |  |  |  |
| Total N                                                                                                  | -                | -     | -     | 0.170         | 0.270 | 0.410 | 0.065     | 0.085 | 0.175 | 0.050          | 0.090 | 0.280 | 0.050     | 0.060 | 0.090 | 0.060         | 0.090 | 0.240 | 0.615            | 0.760 | 1.120 | 0.640         | 0.930 | 1.400 | 0.520     | 0.780 | 1.300 | 0.630                         | 0.910 | 1.300 | 0.520     | 0.780 | 1.300 | 0.630         | 0.910 | 1.300 | 0.520                     | 0.780 | 1.300 |  |  |  |  |  |  |
| Total P                                                                                                  | 0.003            | 0.003 | 0.003 | 0.010         | 0.010 | 0.030 | 0.008     | 0.010 | 0.020 | 0.010          | 0.030 | 0.070 | 0.001     | 0.002 | 0.003 | 0.010         | 0.010 | 0.020 | 0.040            | 0.060 | 0.140 | 0.020         | 0.050 | 0.100 | 0.030     | 0.060 | 0.170 | 0.020                         | 0.040 | 0.090 | 0.030     | 0.060 | 0.170 | 0.020         | 0.040 | 0.090 | 0.030                     | 0.060 | 0.170 |  |  |  |  |  |  |
| TDP                                                                                                      | -                | -     | -     | 0.010         | 0.010 | 0.030 | 0.010     | 0.020 | 0.000 | 0.020          | 0.030 | 0.050 | -         | -     | -     | 0.005         | 0.010 | 0.015 | 0.010            | 0.030 | 0.050 | 0.010         | 0.020 | 0.030 | 0.030     | 0.060 | 0.090 | 0.010                         | 0.020 | 0.030 | 0.030     | 0.060 | 0.090 | 0.010         | 0.020 | 0.030 | 0.030                     | 0.060 | 0.090 |  |  |  |  |  |  |
| (c) Median database                                                                                      |                  |       |       |               |       |       |           |       |       |                |       |       |           |       |       |               |       |       |                  |       |       |               |       |       |           |       |       |                               |       |       |           |       |       |               |       |       |                           |       |       |  |  |  |  |  |  |
| Ammonia                                                                                                  | -                | -     | -     | 0.005         | 0.010 | 0.020 | 0.005     | 0.005 | 0.007 | 0.005          | 0.020 | 0.050 | 0.004     | 0.004 | 0.005 | 0.005         | 0.010 | 0.020 | 0.005            | 0.015 | 0.055 | 0.010         | 0.030 | 0.050 | 0.005     | 0.010 | 0.010 | 0.010                         | 0.020 | 0.050 | 0.005     | 0.010 | 0.010 | 0.010         | 0.020 | 0.050 | 0.005                     | 0.010 | 0.010 |  |  |  |  |  |  |
| NO <sub>3</sub> + NO <sub>2</sub>                                                                        | 0.007            | 0.008 | 0.015 | 0.015         | 0.045 | 0.130 | 0.010     | 0.021 | 0.055 | 0.020          | 0.050 | 0.130 | 0.007     | 0.010 | 0.040 | 0.035         | 0.050 | 0.105 | 0.003            | 0.005 | 0.020 | 0.010         | 0.050 | 0.155 | 0.005     | 0.040 | 0.100 | 0.020                         | 0.057 | 0.200 | 0.005     | 0.040 | 0.100 | 0.020         | 0.057 | 0.200 | 0.005                     | 0.040 | 0.100 |  |  |  |  |  |  |
| SRP                                                                                                      | -                | -     | -     | 0.010         | 0.010 | 0.020 | 0.003     | 0.003 | 0.014 | 0.010          | 0.020 | 0.060 | 0.002     | 0.003 | 0.005 | 0.005         | 0.010 | 0.010 | 0.003            | 0.009 | 0.015 | 0.010         | 0.030 | 0.070 | 0.004     | 0.010 | 0.030 | 0.010                         | 0.020 | 0.035 | 0.004     | 0.010 | 0.030 | 0.010         | 0.020 | 0.035 | 0.004                     | 0.010 | 0.030 |  |  |  |  |  |  |
| TKN                                                                                                      | 0.050            | 0.050 | 0.100 | 0.100         | 0.200 | 0.500 | 0.100     | 0.200 | 0.215 | 0.095          | 0.240 | 0.450 | 0.050     | 0.100 | 0.200 | 0.050         | 0.110 | 0.300 | 0.565            | 1.000 | 1.600 | 0.335         | 0.700 | 1.152 | 0.345     | 0.530 | 1.505 | 0.280                         | 0.522 | 1.000 | 0.345     | 0.530 | 1.505 | 0.280         | 0.522 | 1.000 | 0.345                     | 0.530 | 1.505 |  |  |  |  |  |  |
| Total N                                                                                                  | -                | -     | -     | 0.100         | 0.160 | 0.250 | 0.070     | 0.090 | 0.260 | 0.065          | 0.115 | 0.270 | 0.050     | 0.070 | 0.080 | 0.060         | 0.080 | 0.090 | 0.590            | 0.720 | 0.940 | 0.680         | 0.975 | 1.300 | 0.290     | 0.620 | 1.250 | 0.500                         | 0.810 | 1.200 | 0.290     | 0.620 | 1.250 | 0.500         | 0.810 | 1.200 | 0.290                     | 0.620 | 1.250 |  |  |  |  |  |  |
| Total P                                                                                                  | 0.001            | 0.003 | 0.010 | 0.010         | 0.010 | 0.030 | 0.006     | 0.010 | 0.022 | 0.010          | 0.030 | 0.060 | 0.001     | 0.002 | 0.004 | 0.009         | 0.010 | 0.020 | 0.015            | 0.055 | 0.110 | 0.020         | 0.050 | 0.100 | 0.030     | 0.040 | 0.150 | 0.020                         | 0.040 | 0.090 | 0.030     | 0.040 | 0.150 | 0.020         | 0.040 | 0.090 | 0.030                     | 0.040 | 0.150 |  |  |  |  |  |  |
| TDP                                                                                                      | -                | -     | -     | 0.010         | 0.020 | 0.030 | -         | -     | -     | 0.020          | 0.040 | 0.090 | -         | -     | -     | 0.020         | 0.020 | 0.020 | 0.020            | 0.025 | 0.175 | 0.020         | 0.020 | 0.050 | -         | -     | -     | -                             | -     | -     | -         | -     | 0.010 | 0.020         | 0.030 | -     | -                         | -     | -     |  |  |  |  |  |  |

\*Results for the Wyoming Basin and the Idaho Batholith ecoregions not shown; too few reference observations ( $n < 4$ ). Dashes in the table indicate too few observations ( $n < 4$ ) to generate distribution.

From Suplee, M.W., A. Varghese, and J. Cleland. 2007. Developing Nutrient Criteria for Streams: An Evaluation of the Frequency Distribution Method. *Journal of the American Water Resources Association* 43: 453-472.

**MONTANA House of Representatives  
Visitors Register  
HOUSE NATURAL RESOURCES COMMITTEE**

**Wednesday, March 31, 2021**

**SB 284 - Generally revise county gravel pit permitting**

Sponsor: **Sen. Russel (Russ) Tempel (R)**

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**



**MONTANA House of Representatives**  
**Visitors Register**  
**HOUSE NATURAL RESOURCES COMMITTEE**

**Wednesday, March 31, 2021**

## HJ 27 - Study the funding of conservation districts

Sponsor: **Rep. Kenneth Holmlund (R)**

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**



# MONTANA House of Representatives Visitors Register

**Wednesday, March 31, 2021**

## HB 695 - Generally revise environmental laws

Sponsor: **Rep. Denley Loge (R)**

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

**MONTANA House of Representatives  
Visitors Register  
HOUSE NATURAL RESOURCES COMMITTEE**

**Wednesday, March 31, 2021**

**SB 302 - Extend authorization deadline for use of navigable riverbed**

Sponsor: **Sen. Walt Sales (R)**

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**

# House Natural Resources Committee Testimony Requests

Meeting: 03/31/2021

| Bill   | Name                 | Position              | Location     | Email                                                                       | Affiliation                                     |
|--------|----------------------|-----------------------|--------------|-----------------------------------------------------------------------------|-------------------------------------------------|
| SB-284 | Doug Martens         | Proponent             | Forsyth      | dmartens@rosebudcountyn                                                     | Rosebud County                                  |
| SB-284 | Amy Seaman           | Opponent              | Helena       | aseaman@mtaudubon.org                                                       | Montana Audubon                                 |
| SB-284 | Anne Hedges          | Opponent              | Helena       | ahedges@meic.org                                                            | Montana Environmental Information Center        |
| SB-284 | Edward Coleman       | Informational Witness | Helena       | ecoleman@mt.gov                                                             | DEQ                                             |
| SB-284 | Christopher Cronin   | Informational Witness | Helena       | ccronin@mt.gov                                                              | DEQ                                             |
| SB-302 | Brian Bramblett      | Informational Witness | Helena       | bbramblett@mt.gov                                                           | DNRC                                            |
| SB-302 | Shawn Thomas         | Informational Witness | Helena       | stthomas@mt.gov                                                             | DNRC-Trust Land Division                        |
| HJ-27  | Dean Rogge           | Proponent             | Sand Springs | roggedean@gmail.com                                                         | Montana Association of Conservation Districts   |
| HJ-27  | Jim Simpson, Preside | Proponent             | Polson       | <u><a href="mailto:jim.g.simpson@gmail.com">jim.g.simpson@gmail.com</a></u> | Montana Association of Conservation Districts,  |
| HJ-27  | Stacey Barta         | Informational Witness | Bozeman      | sbarta@mt.gov                                                               | DNRC - Conservation & Resource Development Div. |
| HJ-27  | Anna Miller          | Informational Witness | Helena       | annam@mt.gov                                                                | DNRC                                            |

## **MINUTES**

### **MONTANA HOUSE OF REPRESENTATIVES 67th LEGISLATURE - REGULAR SESSION**

#### **COMMITTEE ON NATURAL RESOURCES**

**Call to Order:** Chair Steve Gunderson, on April 1, 2021 at 3:00 PM, in Room 172  
Capitol

#### **ROLL CALL**

##### **Members Present:**

Rep. Steve Gunderson, Chair (R)  
Rep. Willis Curdy, Vice Chair (D)  
Rep. Rhonda Knudsen, Vice Chair (R)  
Rep. Robert Farris-Olsen (D)  
Rep. Paul Fielder (R)  
Rep. Ross H. Fitzgerald (R)  
Rep. Steven Galloway (R)  
Rep. Marty Malone (R)  
Rep. Marilyn Marler (D)  
Rep. Brian Putnam (R)  
Rep. Kenneth Walsh (R)

##### **Members Excused:**

Rep. Tom France (D)  
Rep. Steve Gist (R)  
Rep. Mark Noland (R)  
Rep. Marvin Weatherwax (D)

**Members Absent:** None

##### **Staff Present:**

Jordee Bomgardner, Committee Secretary  
Joe Kolman, Legislative Branch  
Clara Bentler, Remote Meeting Coordinator

**Audio Committees:** These minutes are in outline form only. They provide a list of participants and a record of official action taken by the committee. The link to the audio recording of the meeting is available on the Legislative Branch website.

##### **Committee Business Summary:**

Executive Action: HB 648; HB 695; SB 29; SB165; SB 284; SB 302; SB 358

14:57:16 Recess  
15:18:08 Reconvened with Rep. Weatherwax and Rep. France present and Rep. Malone and Rep. Galloway excused

**EXECUTIVE ACTION ON HB 648**

15:18:52 **Motion:** Rep. R. Knudsen moved that **HB 648 DO PASS.**

**Discussion:**

15:19:13 Rep. Marler  
15:19:23 Chair Gunderson

15:19:33 **Motion/Vote:** Rep. R. Knudsen moved that **HB 648 BE AMENDED.** Motion carried unanimously by voice vote. Rep. Galloway, Rep. Gist, Rep. Malone and Rep. Noland voted by proxy.

**EXHIBIT**(nah64a01)

15:21:05 **Motion/Vote:** Rep. R. Knudsen moved that **HB 648 DO PASS AS AMENDED.** Motion carried 10-5 by roll call vote with Rep. Curdy, Rep. Farris-Olsen, Rep. France, Rep. Marler and Rep. Weatherwax voting no. Rep. Galloway, Rep. Gist, Rep. Malone and Rep. Noland voted by proxy.

**EXECUTIVE ACTION ON SB 358**

15:22:46 **Motion:** Rep. R. Knudsen moved that **SB 358 BE CONCURRED IN.**

15:23:01 **Motion/Vote:** Rep. R. Knudsen moved that **SB 358 BE AMENDED.** Motion carried unanimously by roll call vote. Rep. Galloway, Rep. Gist, Rep. Malone and Rep. Noland voted by proxy.

**EXHIBIT**(nah64a02)

15:24:23 **Motion:** Rep. R. Knudsen moved that **SB 358 BE CONCURRED IN AS AMENDED.**

**Discussion:**

15:24:36 Rep. Putnam  
15:25:17 Rep. France  
15:26:26 Vice Chair Curdy  
15:26:36 Chair Gunderson  
15:27:15 Rep. France  
15:27:46 Chair Gunderson  
15:28:08 Rep. Farris-Olsen

15:29:22 **Vote:** Motion carried 10-5 by roll call vote with Rep. Curdy, Rep. Farris-Olsen, Rep. France, Rep. Marler and Rep. Weatherwax voting no. Rep. Galloway, Rep. Gist, Rep. Malone and Rep. Noland voted by proxy. Rep. Knudsen will carry the bill.

**EXECUTIVE ACTION ON SB 284**

15:31:04 **Motion:** Rep. R. Knudsen moved that **SB 284 BE CONCURRED IN.**

**Discussion:**

15:31:26 Vice Chair Curdy  
15:32:43 Rep. R. Knudsen  
15:33:36 Rep. Fielder  
15:33:47 Chair Gunderson

15:35:01 **Vote:** Motion carried 10-5 by roll call vote with Rep. Curdy, Rep. Farris-Olsen, Rep. France, Rep. Marler and Rep. Weatherwax voting no. Rep. Galloway, Rep. Gist, Rep. Malone and Rep. Noland voted by proxy. Rep. Fitzgerald will carry the bill.

**EXECUTIVE ACTION ON HB 695**

15:36:58 **Motion:** Rep. R. Knudsen moved that **HB 695 DO PASS.**

15:37:06 **Substitute Motion/Vote:** Rep. France made a substitute motion that **HB 695 BE TABLED.** Substitute Motion failed 6-9 by roll call vote with Rep. Curdy, Rep. Farris-Olsen, Rep. Fielder, Rep. France, Rep. Marler and Rep. Weatherwax voting aye. Rep. Galloway, Rep. Gist, Rep. Malone and Rep. Noland voted by proxy.

15:38:25 **Motion:** Rep. R. Knudsen moved that **HB 695 DO PASS.**

**Discussion:**

15:38:43 Rep. France  
15:40:55 Chair Gunderson  
15:41:14 Rep. Marler  
15:41:29 Vice Chair Curdy

15:41:41 **Vote:** Motion carried 8-7 by roll call vote with Rep. Curdy, Rep. Farris-Olsen, Rep. Fielder, Rep. France, Rep. Malone, Rep. Marler and Rep. Weatherwax voting no. Rep. Galloway, Rep. Gist, Rep. Malone and Rep. Noland voted by proxy.

**EXECUTIVE ACTION ON SB 29**

15:43:58 **Motion/Vote:** Rep. Fitzgerald moved to **RECONSIDER ACTION** on **SB 29.** Motion carried 9-6 by roll call vote with Rep. Fielder, Rep. Galloway, Rep. Gist, Rep. R. Knudsen, Rep. Noland and Rep. Weatherwax voting no. Rep. Galloway, Rep. Gist, Rep. Malone and Rep. Noland voted by proxy.

15:46:30 **Motion/Vote:** Rep. R. Knudsen moved that **SB 29 BE CONCURRED IN.** Motion carried 9-6 by roll call vote with Rep. Fielder, Rep. Galloway, Rep. Gist, Rep. R. Knudsen, Rep. Noland and Rep. Weatherwax voting no. Rep. Galloway, Rep. Gist, Rep. Malone and Rep. Noland voted by proxy. Rep. Fitzgerald will carry the bill.

15:48:10 Rep. Fitzgerald

**EXECUTIVE ACTION ON SB 165**

15:48:39 **Motion/Vote:** Rep. Fitzgerald moved to **RECONSIDER ACTION** on **SB 165**. Motion carried 9-6 by roll call vote with Rep. Curdy, Rep. Farris-Olsen, Rep. France, Rep. Marler, Rep. Putnam and Rep. Weatherwax voting no. Rep. Galloway, Rep. Gist, Rep. Malone and Rep. Noland voted by proxy.

15:50:31 **Motion/Vote:** Rep. R. Knudsen moved that **SB 165 BE CONCURRED IN**. Motion carried 9-6 by roll call vote with Rep. Curdy, Rep. Farris-Olsen, Rep. France, Rep. Marler, Rep. Putnam and Rep. Weatherwax voting no. Rep. Galloway, Rep. Gist, Rep. Malone and Rep. Noland voted by proxy. Rep. Gunderson will carry the bill.

15:51:37 Chair Gunderson

**EXECUTIVE ACTION ON SB 302**

15:52:30 **Motion/Vote:** Rep. R. Knudsen moved that **SB 302 BE CONCURRED IN**. Motion carried unanimously by voice vote. Rep. Galloway, Rep. Gist, Rep. Malone and Rep. Noland voted by proxy. Rep. Walsh will carry the bill.

15:53:20 Chair Gunderson

**ADJOURNMENT**

Adjournment: 15:54:03

---

Jordee Bomgardner, Secretary

jb

Additional Documents:

**EXHIBIT**([nah64aad.pdf](#))



SENATE BILL NO. 358

INTRODUCED BY J. ESP

A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING NUTRIENT CRITERIA FROM MONTANA WATER QUALITY STANDARDS; ELIMINATING VARIANCES AND COMPLIANCE SCHEDULES FOR NUTRIENTS; DIRECTING ADOPTION AND AMENDMENT OF ADMINISTRATIVE RULES; PROVIDING FOR A TRANSITION FOR NUTRIENT STANDARDS; PROVIDING RULEMAKING AUTHORITY AND AN EFFECTIVE DATE; AMENDING SECTIONS 75-5-103, 75-5-105, ~~75-5-301~~, 75-5-317, AND 75-5-320, MCA; AND REPEALING SECTIONS 75-5-313, 75-5-314, AND 75-5-319, MCA; REPEALING ARM 17.30.660; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

**NEW SECTION. Section 1. Transition for nutrient standards--board of environmental review.**

~~The board of environmental rule shall adopt rules related to nutrient standards in consultation with the department of environmental quality and the nutrient work group including:~~

~~(1) defining the terms "undesirable aquatic life" and "harmful" in a manner consistent with 75-5-301;~~

~~(2) developing an adaptive management program that provides an incremental approach for restoration and preservation of water quality in streams impaired by nutrients;~~

~~(3) developing implementation guidance that:~~

~~(a) applies water quality effluent limitations for nutrients, either nitrogen or phosphorus;~~

~~(b) considers reasonable potential for total phosphorus and nitrogen after a full mixing of the discharge with the minimum 14-day average streamflow that occurs once every 5 years in the receiving water body;~~

~~(c) for existing dischargers, considers reasonable potential based on the algae level specified in 75-5-301;~~

~~(d) for new dischargers, including existing dischargers with an increased source, considers reasonable potential based on the following:~~

~~(i) for discharges within the level III ecoregion as designated by the U.S. environmental protection agency that includes the northern Rocky Mountains, Canadian Rocky Mountains, Idaho batholith, middle Rocky Mountains, except for the level IV ecoregion of the Absaroka-Gallatin volcanic mountains:~~

~~(A) total phosphorus concentrations of 0.03 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 0.8 milligrams per liter;~~

~~(ii) for discharges within the level III ecoregion as designated by the U.S. environmental protection agency that includes the northwestern glaciated plains, northwestern great plains, and Wyoming basin, excluding the level IV ecoregions of the sweetgrass uplands, Milk River pothole uplands, Rocky Mountain front foothill potholes, foothill grasslands, river breaks, non-calcareous foothill grasslands, Shield-Smith River valleys, limy foothill grasslands, Pryor-Bighorn foothills, and unglaciated Montana high plains:~~

~~(A) total phosphorous concentrations of 0.15 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 1.3 milligrams per liter;~~

~~(iii) for discharges within the level IV ecoregion as designated by the U.S. environmental protection agency of the Absaroka-Gallatin volcanic mountains:~~

~~(A) total phosphorous concentrations of 0.105 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 0.80 milligrams per liter;~~

~~(iv) for discharges within the level IV ecoregions as designated by the U.S. environmental protection agency excluded from subsection (3)(d)(ii) except for the river breaks for which no nutrient effluent limitations apply:~~

~~(A) total phosphorous concentrations of 0.80 milligrams per liter; and~~

~~(B) total nitrogen concentrations of 0.80 milligrams per liter;~~

~~(e) allows the department to develop reasonable potential guidelines based on concentrations or total phosphorous or total nitrogen greater than those provided in subsections (3)(c) and (3)(d) if:~~

~~(i) data demonstrate that existing concentrations of total phosphorous or total nitrogen exceed the concentrations provided in subsection (3)(a) through (3)(d) and that the discharge will not create conditions that are toxic or harmful to human, animal, plant, or aquatic life;~~

~~(ii) data demonstrate that existing algae levels exceed a monthly average of 150 milligrams of chlorophyll-a per square meter and that the discharge will not create conditions that are toxic or harmful to~~

1 ~~human, animal, plant, or aquatic life; or~~  
2 ~~(iii) data demonstrate that the receiving waterbody can sustain algae levels greater than a monthly~~  
3 ~~average of 150 milligrams of chlorophyll-a per square meter without creating conditions that are toxic or harmful~~  
4 ~~to human, animal, plant, or aquatic life.~~

5 (1) By March 1, 2022, the department of environmental quality shall adopt rules related to narrative  
6 nutrient standards in consultation with the nutrient work group.

7 (2) The rules shall provide for the development of an adaptive management program which provides  
8 for an incremental watershed approach for protecting and maintaining water quality, and that:

9 (a) reasonably balances all factors impacting a water body;

10 (b) prioritizes the minimization of phosphorus, taking into account site-specific conditions; and

11 (c) identifies the appropriate response variables affected by nutrients and associated impact  
12 thresholds in accordance with the beneficial uses of the waterbody.

13 (3) In developing the rules in subsection (2), the department shall consider options pertaining to  
14 whether the point source is new or existing and whether the receiving water body is considered impaired or  
15 unimpaired.

16  
17 **NEW SECTION. Section 2. Transition for nutrient standards -- department.** ~~Subject to board of~~  
18 ~~environmental rulemaking pursuant to [section 1], the department of environmental quality shall implement~~  
19 ~~water quality standards in a manner consistent with [this act] and consistent with [section 1].~~

20 (1) Until final rules are adopted pursuant to [section 1], the department shall administer the discharge  
21 permitting program under 75-5-402 in a manner consistent with ARM 17.30.637 and the intent of [this act].

22 (2) Any nutrient standards variances currently authorized and effective are hereby authorized and  
23 effective under 75-5-320 until otherwise amended or repealed.

24  
25 **NEW SECTION. Section 3. Board to amend rules.** The board of environmental review shall amend  
26 ARM 17.30.201, 17.30.507, 17.30.516, 17.30.602, 17.30.619, 17.30.622, 17.30.623, 17.30.624, 17.30.625,  
27 17.30.626, 17.30.627, 17.30.628, 17.30.629, 17.30.635, 17.30.702, and 17.30.715 to delete all references to  
28 department circular DEQ-12A, department circular DEQ-12B, base numeric nutrient standards, and nutrient

standards variances.

**NEW SECTION. Section 4. Department to amend rules.** The department of environmental quality

shall amend ARM 17.30.602 and ~~17.30.660~~ to delete all references to department circular DEQ-12A, department circular DEQ-12B, base numeric nutrient standards, and nutrient standards variances.

**Section 5.** Section 75-5-103, MCA, is amended to read:

**"75-5-103. (Temporary) Definitions.** Unless the context requires otherwise, in this chapter, the following definitions apply:

(1) "Associated supporting infrastructure" means:

(a) electric transmission and distribution facilities;

(b) pipeline facilities;

(c) aboveground ponds and reservoirs and underground storage reservoirs;

(d) rail transportation;

(e) aqueducts and diversion dams;

(f) devices or equipment associated with the delivery of an energy form or product produced at an energy development project; or

(g) other supporting infrastructure, as defined by board rule, that is necessary for an energy development project.

~~(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface water that are adopted to protect the designated uses of a surface water body.~~

~~(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite that are adopted to protect human health.~~

~~(3)~~ (2) "Board" means the board of environmental review provided for in 2-15-3502.

~~(4)~~ (3) "Contamination" means impairment of the quality of state waters by sewage, industrial wastes, or other wastes, creating a hazard to human health.

~~(5)~~ (4) "Council" means the water pollution control advisory council provided for in 2-15-2107.

~~(6)~~ (5) (a) "Currently available data" means data that is readily available to the department at the time

1 a decision is made, including information supporting its previous lists of water bodies that are threatened or  
2 impaired.

3 (b) The term does not mean new data to be obtained as a result of department efforts.

4 ~~(7)~~ (6) "Degradation" means a change in water quality that lowers the quality of high-quality waters for  
5 a parameter. The term does not include those changes in water quality determined to be nonsignificant  
6 pursuant to 75-5-301(5)(c).

7 ~~(8)~~ (7) "Department" means the department of environmental quality provided for in 2-15-3501.

8 ~~(9)~~ (8) "Disposal system" means a system for disposing of sewage, industrial, or other wastes and  
9 includes sewage systems and treatment works.

10 ~~(10)~~ (9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of  
11 chemical, physical, biological, and other constituents that are discharged into state waters.

12 ~~(11)~~ (10) (a) "Energy development project" means each plant, unit, or other development and  
13 associated developments, including any associated supporting infrastructure, designed for or capable of:

14 (i) generating electricity;

15 (ii) producing gas derived from coal;

16 (iii) producing liquid hydrocarbon products;

17 (iv) refining crude oil or natural gas;

18 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax  
19 incentive pursuant to Title 15, chapter 70, part 5;

20 (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant  
21 to 15-32-701; or

22 (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or  
23 greater than 50 kilovolts.

24 (b) The term does not include a nuclear facility as defined in 75-20-1202.

25 ~~(12)~~ (11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,  
26 whether or not those uses are included in the water quality standards.

27 ~~(13)~~ (12) "High-quality waters" means all state waters, except:

28 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by

1 the board's classification rules; and

2 (b) surface waters that:

3 (i) are not capable of supporting any one of the designated uses for their classification; or

4 (ii) have zero flow or surface expression for more than 270 days during most years.

5 ~~(14)~~ (13) "Impaired water body" means a water body or stream segment for which sufficient credible  
6 data shows that the water body or stream segment is failing to achieve compliance with applicable water quality  
7 standards.

8 ~~(15)~~ (14) "Industrial waste" means a waste substance from the process of business or industry or from  
9 the development of any natural resource, together with any sewage that may be present.

10 ~~(16)~~ (15) "Interested person" means a person who has a real property interest, a water right, or an  
11 economic interest that is or may be directly and adversely affected by the department's preliminary decision  
12 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested  
13 authorization to degrade high-quality waters.

14 ~~(17)~~ (16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to  
15 one of its existing or future nonpoint sources or to natural background sources.

16 ~~(18)~~ (17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a  
17 violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the  
18 maximum change that can occur from the best practicable condition in a surface water without causing a  
19 violation of the surface water quality standards.

20 ~~(19)~~ (18) "Local department of health" means the staff, including health officers, employed by a county,  
21 city, city-county, or district board of health.

22 ~~(20)~~ (19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,  
23 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,  
24 thallium, and zinc.

25 ~~(21)~~ (20) "Mixing zone" means an area established in a permit or final decision on nondegradation  
26 issued by the department where water quality standards may be exceeded, subject to conditions that are  
27 imposed by the department and that are consistent with the rules adopted by the board.

28 ~~(22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a~~

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Drafter: Jason Mohr, 406-444-1640

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~~1 determination that base numeric nutrient standards cannot be achieved because of economic impacts or~~  
~~2 because of the limits of technology. The term includes individual, general, and alternative nutrient standards~~  
~~3 variances in accordance with 75-5-313.~~

4 (23) (21) "Nutrient work group" means an advisory work group, convened by the department,  
5 representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and  
6 other interested parties that will advise the department on the base numeric nutrient standards, the  
7 development of nutrient standards variances, and the implementation of those standards, and variances  
8 together with associated economic impacts.

9 (24) (22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,  
10 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or  
11 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

12 (25) (23) "Outstanding resource waters" means:

13 (a) state surface waters located wholly within the boundaries of areas designated as national parks or  
14 national wilderness areas as of October 1, 1995; or

15 (b) other surface waters or ground waters classified by the board under the provisions of 75-5-316  
16 and approved by the legislature.

17 (26) (24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a  
18 point source.

19 (27) (25) "Parameter" means a physical, biological, or chemical property of state water when a value of  
20 that property affects the quality of the state water.

21 (28) (26) "Person" means the state, a political subdivision of the state, institution, firm, corporation,  
22 partnership, individual, or other entity and includes persons resident in Canada.

23 (29) (27) "Point source" means a discernible, confined, and discrete conveyance, including but not  
24 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or  
25 other floating craft, from which pollutants are or may be discharged.

26 (30) (28) (a) "Pollution" means:

27 (i) contamination or other alteration of the physical, chemical, or biological properties of state waters  
28 that exceeds that permitted by Montana water quality standards, including but not limited to standards relating

to change in temperature, taste, color, turbidity, or odor; or

(ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other wildlife.

(b) The term does not include:

(i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge permit rules adopted by the board under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221.

(c) Contamination referred to in subsection ~~(30)(b)(iii)~~ (28)(b)(iii) does not require a mixing zone.

~~(31)~~ (29) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(32)~~ (30) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(33)~~ (31) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(34)~~ (32) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.



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~~(35)~~ (33) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(36)~~ (34) "Threatened water body" means a water body or stream segment for which sufficient credible data and calculated increases in loads show that the water body or stream segment is fully supporting its designated uses but threatened for a particular designated use because of:

(a) proposed sources that are not subject to pollution prevention or control actions required by a discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or

(b) documented adverse pollution trends.

~~(37)~~ (35) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations for point sources and load allocations for both nonpoint sources and natural background sources established at a level necessary to achieve compliance with applicable surface water quality standards.

~~(38)~~ (36) "Treatment works" means works, including sewage lagoons, installed for treating or holding sewage, industrial wastes, or other wastes.

~~(39)~~ (37) "Waste load allocation" means the portion of a receiving water's loading capacity that is allocated to one of its existing or future point sources.

~~(40)~~ (38) "Water quality protection practices" means those activities, prohibitions, maintenance procedures, or other management practices applied to point and nonpoint sources designed to protect, maintain, and improve the quality of state waters. Water quality protection practices include but are not limited to treatment requirements, standards of performance, effluent standards, and operating procedures and practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

~~(41)~~ (39) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

~~(42)~~ (40) "Watershed advisory group" means a group of individuals who wish to participate in an advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the development of TMDLs under 75-5-703, including those groups or individuals requested by the department to participate in an advisory capacity as provided in 75-5-704.

**75-5-103. (Effective on occurrence of contingency) Definitions.** Unless the context requires

1 otherwise, in this chapter, the following definitions apply:

2 (1) "Associated supporting infrastructure" means:

3 (a) electric transmission and distribution facilities;

4 (b) pipeline facilities;

5 (c) aboveground ponds and reservoirs and underground storage reservoirs;

6 (d) rail transportation;

7 (e) aqueducts and diversion dams;

8 (f) devices or equipment associated with the delivery of an energy form or product produced at an  
9 energy development project; or

10 (g) other supporting infrastructure, as defined by board rule, that is necessary for an energy  
11 development project.

12 ~~(2) (a) "Base numeric nutrient standards" means numeric water quality criteria for nutrients in surface~~  
13 ~~water that are adopted to protect the designated uses of a surface water body.~~

14 ~~(b) The term does not include numeric water quality standards for nitrate, nitrate plus nitrite, or nitrite~~  
15 ~~that are adopted to protect human health.~~

16 ~~(3) (2)~~ "Board" means the board of environmental review provided for in 2-15-3502.

17 ~~(4) (3)~~ "Contamination" means impairment of the quality of state waters by sewage, industrial wastes,  
18 or other wastes, creating a hazard to human health.

19 ~~(5) (4)~~ "Council" means the water pollution control advisory council provided for in 2-15-2107.

20 ~~(6) (5)~~ (a) "Currently available data" means data that is readily available to the department at the time  
21 a decision is made, including information supporting its previous lists of water bodies that are threatened or  
22 impaired.

23 (b) The term does not mean new data to be obtained as a result of department efforts.

24 ~~(7) (6)~~ "Degradation" means a change in water quality that lowers the quality of high-quality waters for  
25 a parameter. The term does not include those changes in water quality determined to be nonsignificant  
26 pursuant to 75-5-301(5)(c).

27 ~~(8) (7)~~ "Department" means the department of environmental quality provided for in 2-15-3501.

28 ~~(9) (8)~~ "Disposal system" means a system for disposing of sewage, industrial, or other wastes and

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1 includes sewage systems and treatment works.

2 ~~(10)~~ (9) "Effluent standard" means a restriction or prohibition on quantities, rates, and concentrations of  
3 chemical, physical, biological, and other constituents that are discharged into state waters.

4 ~~(11)~~ (10) (a) "Energy development project" means each plant, unit, or other development and  
5 associated developments, including any associated supporting infrastructure, designed for or capable of:

6 (i) generating electricity;

7 (ii) producing gas derived from coal;

8 (iii) producing liquid hydrocarbon products;

9 (iv) refining crude oil or natural gas;

10 (v) producing alcohol to be blended for ethanol-blended gasoline and that are eligible for a tax  
11 incentive pursuant to Title 15, chapter 70, part 5;

12 (vi) producing biodiesel and that are eligible for a tax incentive for the production of biodiesel pursuant  
13 to 15-32-701; or

14 (vii) transmitting electricity through an electric transmission line with a design capacity of equal to or  
15 greater than 50 kilovolts.

16 (b) The term does not include a nuclear facility as defined in 75-20-1202.

17 ~~(12)~~ (11) "Existing uses" means those uses actually attained in state waters on or after July 1, 1971,  
18 whether or not those uses are included in the water quality standards.

19 ~~(13)~~ (12) "High-quality waters" means all state waters, except:

20 (a) ground water classified as of January 1, 1995, within the "III" or "IV" classifications established by  
21 the board's classification rules; and

22 (b) surface waters that:

23 (i) are not capable of supporting any one of the designated uses for their classification; or

24 (ii) have zero flow or surface expression for more than 270 days during most years.

25 ~~(14)~~ (13) "Impaired water body" means a water body or stream segment for which sufficient credible  
26 data shows that the water body or stream segment is failing to achieve compliance with applicable water quality  
27 standards.

28 ~~(15)~~ (14) "Industrial waste" means a waste substance from the process of business or industry or from

1 the development of any natural resource, together with any sewage that may be present.

2 (46) (15) "Interested person" means a person who has a real property interest, a water right, or an  
3 economic interest that is or may be directly and adversely affected by the department's preliminary decision  
4 regarding degradation of state waters, pursuant to 75-5-303. The term includes a person who has requested  
5 authorization to degrade high-quality waters.

6 (47) (16) "Load allocation" means the portion of a receiving water's loading capacity that is allocated to  
7 one of its existing or future nonpoint sources or to natural background sources.

8 (48) (17) "Loading capacity" means the mass of a pollutant that a water body can assimilate without a  
9 violation of water quality standards. For pollutants that cannot be measured in terms of mass, it means the  
10 maximum change that can occur from the best practicable condition in a surface water without causing a  
11 violation of the surface water quality standards.

12 (49) (18) "Local department of health" means the staff, including health officers, employed by a county,  
13 city, city-county, or district board of health.

14 (20) (19) "Metal parameters" includes but is not limited to aluminum, antimony, arsenic, beryllium,  
15 barium, cadmium, chromium, copper, fluoride, iron, lead, manganese, mercury, nickel, selenium, silver,  
16 thallium, and zinc.

17 (24) (20) "Mixing zone" means an area established in a permit or final decision on nondegradation  
18 issued by the department where water quality standards may be exceeded, subject to conditions that are  
19 imposed by the department and that are consistent with the rules adopted by the board.

20 ~~(22) "Nutrient standards variance" means numeric water quality criteria for nutrients based on a~~  
21 ~~determination that base numeric nutrient standards cannot be achieved because of economic impacts or~~  
22 ~~because of the limits of technology. The term includes individual, general, and alternative nutrient standards~~  
23 ~~variances in accordance with 75-5-313.~~

24 (23) (21) "Nutrient work group" means an advisory work group, convened by the department,  
25 representing publicly owned and privately owned point sources of pollution, nonpoint sources of pollution, and  
26 other interested parties that will advise the department on the base numeric nutrient standards, the  
27 development of nutrient standards variances, and the implementation of those standards, and variances  
28 together with associated economic impacts.

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1           ~~(24)~~ (22) "Other wastes" means garbage, municipal refuse, decayed wood, sawdust, shavings, bark,  
2 lime, sand, ashes, offal, night soil, oil, grease, tar, heat, chemicals, dead animals, sediment, wrecked or  
3 discarded equipment, radioactive materials, solid waste, and all other substances that may pollute state waters.

4           ~~(25)~~ (23) "Outstanding resource waters" means:

5           (a) state surface waters located wholly within the boundaries of areas designated as national parks or  
6 national wilderness areas as of October 1, 1995; or

7           (b) other surface waters or ground waters classified by the board under the provisions of 75-5-316  
8 and approved by the legislature.

9           ~~(26)~~ (24) "Owner or operator" means a person who owns, leases, operates, controls, or supervises a  
10 point source.

11           ~~(27)~~ (25) "Parameter" means a physical, biological, or chemical property of state water when a value of  
12 that property affects the quality of the state water.

13           ~~(28)~~ (26) "Person" means the state, a political subdivision of the state, institution, firm, corporation,  
14 partnership, individual, or other entity and includes persons resident in Canada.

15           ~~(29)~~ (27) "Point source" means a discernible, confined, and discrete conveyance, including but not  
16 limited to any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, or vessel or  
17 other floating craft, from which pollutants are or may be discharged.

18           ~~(30)~~ (28) (a) "Pollution" means:

19           (i) contamination or other alteration of the physical, chemical, or biological properties of state waters  
20 that exceeds that permitted by Montana water quality standards, including but not limited to standards relating  
21 to change in temperature, taste, color, turbidity, or odor; or

22           (ii) the discharge, seepage, drainage, infiltration, or flow of liquid, gaseous, solid, radioactive, or other  
23 substance into state water that will or is likely to create a nuisance or render the waters harmful, detrimental, or  
24 injurious to public health, recreation, safety, or welfare, to livestock, or to wild animals, birds, fish, or other  
25 wildlife.

26           (b) The term does not include:

27           (i) a discharge, seepage, drainage, infiltration, or flow that is authorized under the pollution discharge  
28 permit rules adopted by the board under this chapter;

(ii) activities conducted under this chapter that comply with the conditions imposed by the department in short-term authorizations pursuant to 75-5-308;

(iii) contamination of ground water within the boundaries of a geologic storage reservoir, as defined in 82-11-101, by a carbon dioxide injection well in accordance with a permit issued pursuant to Title 82, chapter 11, part 1;

(iv) contamination of ground water within the boundaries of an underground mine using in situ coal gasification and operating in accordance with a permit issued under 82-4-221;

(c) Contamination referred to in subsections ~~(30)(b)(iii) and (30)(b)(iv)~~ (28)(b)(iii) and (28)(b)(iv) does not require a mixing zone.

~~(34)~~ (29) "Sewage" means water-carried waste products from residences, public buildings, institutions, or other buildings, including discharge from human beings or animals, together with ground water infiltration and surface water present.

~~(32)~~ (30) "Sewage system" means a device for collecting or conducting sewage, industrial wastes, or other wastes to an ultimate disposal point.

~~(33)~~ (31) "Standard of performance" means a standard adopted by the board for the control of the discharge of pollutants that reflects the greatest degree of effluent reduction achievable through application of the best available demonstrated control technology, processes, operating methods, or other alternatives, including, when practicable, a standard permitting no discharge of pollutants.

~~(34)~~ (32) (a) "State waters" means a body of water, irrigation system, or drainage system, either surface or underground.

(b) The term does not apply to:

(i) ponds or lagoons used solely for treating, transporting, or impounding pollutants; or

(ii) irrigation waters or land application disposal waters when the waters are used up within the irrigation or land application disposal system and the waters are not returned to state waters.

~~(35)~~ (33) "Sufficient credible data" means chemical, physical, or biological monitoring data, alone or in combination with narrative information, that supports a finding as to whether a water body is achieving compliance with applicable water quality standards.

~~(36)~~ (34) "Threatened water body" means a water body or stream segment for which sufficient credible

1 data and calculated increases in loads show that the water body or stream segment is fully supporting its  
2 designated uses but threatened for a particular designated use because of:

- 3 (a) proposed sources that are not subject to pollution prevention or control actions required by a  
4 discharge permit, the nondegradation provisions, or reasonable land, soil, and water conservation practices; or  
5 (b) documented adverse pollution trends.

6 ~~(37)~~ (35) "Total maximum daily load" or "TMDL" means the sum of the individual waste load allocations  
7 for point sources and load allocations for both nonpoint sources and natural background sources established at  
8 a level necessary to achieve compliance with applicable surface water quality standards.

9 ~~(38)~~ (36) "Treatment works" means works, including sewage lagoons, installed for treating or holding  
10 sewage, industrial wastes, or other wastes.

11 ~~(39)~~ (37) "Waste load allocation" means the portion of a receiving water's loading capacity that is  
12 allocated to one of its existing or future point sources.

13 ~~(40)~~ (38) "Water quality protection practices" means those activities, prohibitions, maintenance  
14 procedures, or other management practices applied to point and nonpoint sources designed to protect,  
15 maintain, and improve the quality of state waters. Water quality protection practices include but are not limited  
16 to treatment requirements, standards of performance, effluent standards, and operating procedures and  
17 practices to control site runoff, spillage or leaks, sludge or water disposal, or drainage from material storage.

18 ~~(41)~~ (39) "Water well" means an excavation that is drilled, cored, bored, washed, driven, dug, jetted, or  
19 otherwise constructed and intended for the location, diversion, artificial recharge, or acquisition of ground water.

20 ~~(42)~~ (40) "Watershed advisory group" means a group of individuals who wish to participate in an  
21 advisory capacity in revising and reprioritizing the list of water bodies developed under 75-5-702 and in the  
22 development of TMDLs under 75-5-703, including those groups or individuals requested by the department to  
23 participate in an advisory capacity as provided in 75-5-704."

24

25 **Section 6.** Section 75-5-105, MCA, is amended to read:

26 **"75-5-105. Confidentiality of records.** Except as provided in 80-15-108, any information concerning  
27 sources of pollution that is furnished to the board or department or that is obtained by either of them is a matter  
28 of public record and open to public use. However, any information unique to the owner or operator of a source

1 of pollution that would, if disclosed, reveal methods or processes entitled to protection as trade secrets must be  
2 maintained as confidential if so determined by a court of competent jurisdiction. The owner or operator shall file  
3 a declaratory judgment action to establish the existence of a trade secret if the owner or operator wishes the  
4 information to remain confidential. The department must be served in the action and may intervene as a party.  
5 Any information not intended to be public when submitted to the board or department must be submitted in  
6 writing and clearly marked as confidential. ~~Except as provided in 75-5-314, the~~ The data describing physical  
7 and chemical characteristics of a waste discharged to state waters may not be considered confidential. The  
8 board may use any information in compiling or publishing analyses or summaries relating to water pollution if  
9 the analyses or summaries do not identify any owner or operator of a source of pollution or reveal any  
10 information that is otherwise made confidential by this section."  
11

12 **Section 7.** Section 75-5-301, MCA, is amended to read:

13 ~~"75-5-301. Classification and standards for state waters. Consistent with the provisions of 80-15-~~  
14 ~~201 and this chapter, the board shall:~~

15 ~~(1) establish the classification of all state waters in accordance with their present and future most~~  
16 ~~beneficial uses, creating an appropriate classification for streams that, due to sporadic flow, do not support an~~  
17 ~~aquatic ecosystem that includes salmonid or nonsalmonid fish;~~

18 ~~(2) formulate and adopt standards of water quality, giving consideration to the economics of waste~~  
19 ~~treatment and prevention. When rules are adopted regarding temporary standards, they must conform with the~~  
20 ~~requirements of 75-5-312. Standards adopted by the board must meet the following requirements:~~

21 ~~(a) for carcinogens, the water quality standard for protection of human health must be the value~~  
22 ~~associated with an excess lifetime cancer risk level, assuming continuous lifetime exposure, not to exceed  $1 \times 10^{-3}$~~   
23  ~~$10^{-3}$  in the case of arsenic and  $1 \times 10^{-5}$  for other carcinogens. However, if a standard established at a risk level~~  
24 ~~of  $1 \times 10^{-3}$  for arsenic or  $1 \times 10^{-5}$  for other carcinogens violates the maximum contaminant level obtained from~~  
25 ~~40 CFR, part 141, then the maximum contaminant level must be adopted as the standard for that carcinogen.~~

26 ~~(b) standards for the protection of aquatic life do not apply to ground water.~~

27 ~~(c) nutrient water quality standards, whether numeric or narrative, apply only:~~

28 ~~(i) to streams, except for ephemeral streams, with algae levels greater than a monthly average of 150~~



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1 ~~milligrams of chlorophyll-a per square meter based on field values, or a calibrated water quality model if field~~  
2 ~~values are unavailable; and~~  
3 ~~(ii) between July 1 and September 30 of each calendar year.~~  
4 ~~(3) review, from time to time at intervals of not more than 3 years and, to the extent permitted by this~~  
5 ~~chapter, revise established classifications of waters and adopted standards of water quality;~~  
6 ~~(4) adopt rules governing the granting of mixing zones, requiring that mixing zones granted by the~~  
7 ~~department be specifically identified and requiring that mixing zones have:~~  
8 ~~(a) the smallest practicable size;~~  
9 ~~(b) a minimum practicable effect on water uses; and~~  
10 ~~(c) definable boundaries;~~  
11 ~~(5) adopt rules implementing the nondegradation policy established in 75-5-303, including but not~~  
12 ~~limited to rules that:~~  
13 ~~(a) provide a procedure for department review and authorization of degradation;~~  
14 ~~(b) establish criteria for the following:~~  
15 ~~(i) determining important economic or social development; and~~  
16 ~~(ii) weighing the social and economic importance to the public of allowing the proposed project against~~  
17 ~~the cost to society associated with a loss of water quality;~~  
18 ~~(c) establish criteria for determining whether a proposed activity or class of activities, in addition to~~  
19 ~~those activities identified in 75-5-317, will result in nonsignificant changes in water quality for any parameter in~~  
20 ~~order that those activities are not required to undergo review under 75-5-303(3). These criteria must be~~  
21 ~~established in a manner that generally:~~  
22 ~~(i) equates significance with the potential for harm to human health, a beneficial use, or the~~  
23 ~~environment;~~  
24 ~~(ii) considers both the quantity and the strength of the pollutant;~~  
25 ~~(iii) considers the length of time the degradation will occur;~~  
26 ~~(iv) considers the character of the pollutant so that greater significance is associated with carcinogens~~  
27 ~~and toxins that bioaccumulate or biomagnify and lesser significance is associated with substances that are less~~  
28 ~~harmful or less persistent.~~

~~(d) provide that changes of nitrate as nitrogen in ground water are nonsignificant if the discharge will not cause degradation of surface water and the predicted concentration of nitrate as nitrogen at the boundary of the ground water mixing zone does not exceed:~~

~~(i) 7.5 milligrams per liter from sources other than sewage;~~

~~(ii) 5.0 milligrams per liter from sewage discharged from a system that does not use level two treatment in an area where the ground water nitrate as nitrogen is 5.0 milligrams per liter or less;~~

~~(iii) 7.5 milligrams per liter from sewage discharged from a system using level two treatment, which must be defined in the rules; or~~

~~(iv) 7.5 milligrams per liter from sewage discharged from a system in areas where the ground water nitrate as nitrogen level exceeds 5.0 milligrams per liter primarily from sources other than human waste.~~

~~(6) to the extent practicable, ensure that the rules adopted under subsection (5) establish objective and quantifiable criteria for various parameters. These criteria must, to the extent practicable, constitute guidelines for granting or denying applications for authorization to degrade high quality waters under the policy established in 75-5-303(2) and (3).~~

~~(7) adopt rules to implement this section."~~

**Section 7.** Section 75-5-317, MCA, is amended to read:

**"75-5-317. Nonsignificant activities.** (1) The categories or classes of activities identified in subsection (2) cause changes in water quality that are nonsignificant because of their low potential for harm to human health or the environment and their conformance with the guidance found in 75-5-301(5)(c).

(2) The following categories or classes of activities are not subject to the provisions of 75-5-303:

(a) existing activities that are nonpoint sources of pollution as of April 29, 1993;

(b) activities that are nonpoint sources of pollution initiated after April 29, 1993, when reasonable land, soil, and water conservation practices are applied and existing and anticipated beneficial uses will be fully protected;

(c) use of agricultural chemicals in accordance with a specific agricultural chemical ground water management plan promulgated under 80-15-212, if applicable, or in accordance with an environmental protection agency-approved label and when existing and anticipated uses will be fully protected;

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1 (d) changes in existing water quality resulting from an emergency or remedial activity that is designed  
2 to protect public health or the environment and is approved, authorized, or required by the department;

3 (e) changes in existing ground water quality resulting from treatment of a public water supply system,  
4 as defined in 75-6-102, or a public sewage system, as defined in 75-6-102, by chlorination or other similar  
5 means that is designed to protect the public health or the environment and that is approved, authorized, or  
6 required by the department;

7 (f) the use of drilling fluids, sealants, additives, disinfectants, and rehabilitation chemicals in water well  
8 or monitoring well drilling, development, or abandonment, if used according to department-approved water  
9 quality protection practices and if no discharge to surface water will occur;

10 (g) short-term changes in existing water quality resulting from activities authorized by the department  
11 pursuant to 75-5-308;

12 (h) land application of animal waste, domestic septage, or waste from public sewage treatment  
13 systems containing nutrients when the wastes are applied to the land in a beneficial manner, application rates  
14 are based on agronomic uptake of applied nutrients, and other parameters will not cause degradation;

15 (i) use of gray water, as defined in 75-5-325, from nonpublic gray water reuse systems for irrigation  
16 during the growing season in accordance with gray water reuse rules adopted pursuant to 75-5-305;

17 (j) incidental leakage of water from a public water supply system, as defined in 75-6-102, or from a  
18 public sewage system, as defined in 75-6-102, utilizing best practicable control technology designed and  
19 constructed in accordance with Title 75, chapter 6;

20 (k) discharges of water to ground water from water well or monitoring well tests, hydrostatic pressure  
21 and leakage tests, or wastewater from the disinfection or flushing of water mains and storage reservoirs,  
22 conducted in accordance with department-approved water quality protection practices;

23 (l) oil and gas drilling, production, abandonment, plugging, and restoration activities that do not result  
24 in discharges to surface water and that are performed in accordance with Title 82, chapter 10, or Title 82,  
25 chapter 11;

26 (m) short-term changes in existing water quality resulting from ordinary and everyday activities of  
27 humans or domesticated animals, including but not limited to:

28 (i) such recreational activities as boating, hiking, hunting, fishing, wading, swimming, and camping;

- (ii) fording of streams or other bodies of water by vehicular or other means; and
- (iii) drinking from or fording of streams or other bodies of water by livestock and other domesticated animals;
- (n) coal and uranium prospecting that does not result in a discharge to surface water, that does not involve a test pit located in surface water or that may affect surface water, and that is performed in accordance with Title 82, chapter 4;
- (o) solid waste management systems, motor vehicle wrecking facilities, and county motor vehicle graveyards licensed and operating in accordance with Title 75, chapter 10, part 2, or Title 75, chapter 10, part 5;
- (p) hazardous waste management facilities permitted and operated in accordance with Title 75, chapter 10, part 4;
- (q) metallic and nonmetallic mineral exploration that does not result in a discharge to surface water and that is permitted under and performed in accordance with Title 82, chapter 4, parts 3 and 4;
- (r) stream-related construction projects or stream enhancement projects that result in temporary changes to water quality but do not result in long-term detrimental effects and that have been authorized pursuant to 75-5-318;
- (s) diversions or withdrawals of water established and recognized under Title 85, chapter 2;
- (t) the maintenance, repair, or replacement of dams, diversions, weirs, or other constructed works that are related to existing water rights and that are within wilderness areas so long as existing and anticipated beneficial uses are protected and as long as the changes in existing water quality relative to the project are short term; and
- (u) discharges of total phosphorus or total nitrogen that do not:
- (i) create conditions that are toxic or harmful to human, animal, plant, and aquatic life;
- (ii) create conditions that produce undesirable aquatic life; or
- (iii) cause measurable changes in aquatic life; and
- ~~(u)~~(v) discharges that, after full mixing with the minimum 14-day average streamflow that occurs once every 5 years, result in algae levels less than or equal to a monthly average of 150 milligrams of chlorophyll-a per square meter during the time period from July 1 through September 30; and

(u) ~~(v)~~ any other activity that is nonsignificant because of its low potential for harm to human health or to the environment and its conformance with the guidance found in 75-5-301(5)(c)."

**Section 8.** Section 75-5-320, MCA, is amended to read:

**"75-5-320. Temporary water quality standards variances.** (1) Except as provided in 75-5-222(2) and ~~75-5-313~~, the department may adopt rules providing criteria and procedures for the department to issue a temporary variance to water quality standards if:

(a) a variance will not result in a lowering of currently attained, ambient water quality;

(b) the department rules are consistent, as necessary, with federal rules that authorize states to adopt variances from standards, including but not limited to 40 CFR 131.14; and

(c) (i) a permittee cannot reasonably expect to meet a water quality standard during the permit term for which the variance is approved; and

(ii) a permit compliance schedule is not feasible to preclude the need for a variance during the permit term for which the variance is approved.

(2) In order to receive a temporary variance, a permittee shall evaluate facility operations and infrastructure to maximize pollutant reduction through an optimization study. The variance must require the implementation of optimization study actions as terms and conditions of the discharge permit.

(3) The department shall review a temporary variance issued pursuant to this section at least once every 5 years and may continue, modify, or terminate the temporary variance as a result of the review."

**NEW SECTION. Section 9. Repealer.** The following sections of the Montana Code Annotated are repealed:

75-5-313. Nutrient standards variances -- individual, general, and alternative.

75-5-314. Confidentiality of base numeric standards and nutrient standards variances.

75-5-319. Compliance schedule for base numeric nutrient standards.

**NEW SECTION. Section 10. Repealer.** ARM 17.30.660 is repealed.

## 67th Legislature

**SB 358.1.1**

- END -



# **2021 Session**

## **Additional Documents**

**May include the following:**

- **Business Report**
- **Roll Call - Attendance**
- **Standing Committee Reports**
- **Tabled Bills**
- **Fiscal Reports**
- **Roll Call Votes**
- **Informational Item's**
- **Witness Statements**
- **Visitor Register**
- **Any other type of documents such as:**
  - Petitions, Pamphlets, Leaflets, Brochures, Emails, all documents given to Committee Secretary 24 hours after the meeting adjourned.**

**The original exhibit/items are on file at the Montana Historical Society and may be viewed there.**

**BUSINESS REPORT**

**MONTANA HOUSE OF REPRESENTATIVES  
67th LEGISLATURE - REGULAR SESSION**

**HOUSE NATURAL RESOURCES COMMITTEE**

**Date:** Thursday, April 1, 2021

**Place:** Capitol

**Time:** 3:00 PM

**Room:** 172

**BILLS and RESOLUTIONS HEARD:**

None

**EXECUTIVE ACTION TAKEN:**

HB 648 - Do Pass As Amended

HB 695 - Do Pass

SB 29 - Be Concurred In

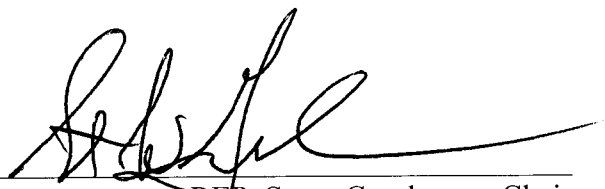
SB 165 - Be Concurred In As Amended

SB 284 - Be Concurred In

SB 302 - Be Concurred In

SB 358 - Be Concurred In As Amended

**Comments:**

  
\_\_\_\_\_  
REP. Steve Gunderson, Chair





*The Big Sky Country*

# MONTANA HOUSE OF REPRESENTATIVES

## NATURAL RESOURCES COMMITTEE

### ROLL CALL

DATE: 4-1-2021

| NAME                      | PRESENT | ABSENT/EXCUSED |
|---------------------------|---------|----------------|
| CHAIR GUNDERSON           | ✓       |                |
| VICE CHAIR RHONDA KNUDSEN | ✓       |                |
| VICE CHAIR CURDY          | ✓       |                |
| REP. FARRIS-OLSEN         | ✓       |                |
| REP. FIELDER              | ✓       |                |
| REP. FITZGERALD           | ✓       |                |
| REP. FRANCE               |         | ✓              |
| REP. GALLOWAY             | ✓       |                |
| REP. GIST                 |         | ✓              |
| REP. MALONE               | ✓       |                |
| REP. MARLER               | ✓       |                |
| REP. NOLAND               |         | ✓              |
| REP. PUTNAM               | ✓       |                |
| REP. WALSH                | ✓       |                |
| REP. WEATHERWAX           |         | ✓              |

15 MEMBERS



## HOUSE STANDING COMMITTEE REPORT

April 1, 2021

Page 1 of 1

Mr. Speaker:

We, your committee on Natural Resources recommend that **House Bill 648** (first reading copy -  
- white) **do pass as amended.**

Signed: \_\_\_\_\_

*Representative Steve Gunderson, Chair*

### And, that such amendments read:

1. Page 2, line 16.

Following: "appropriate."

Insert: "The department may issue grants to qualified individuals or entities  
to conduct the investigation."

2. Page 2, line 17.

Strike: "bureau of mines and geology"

Insert: "department"

- END -

Committee Vote:

Yes 10, No 5

Fiscal Note Required \_\_\_\_

HB0648001SC.hlc

4.6.21  
A 9:10 AM  
(1)



## HOUSE STANDING COMMITTEE REPORT

April 1, 2021

Page 1 of 1

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **House Bill 695** (first reading copy -  
- white) do pass.

Signed:   
*Representative Steve Gunderson, Chair*

- END -

**Committee Vote:**

**Yes 8, No 7**

Fiscal Note Required ☐

HB0695001SC.hlc

4.6.21  
2:10 PM  
(21)



## HOUSE STANDING COMMITTEE REPORT

April 1, 2021

Page 1 of 1

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **Senate Bill 29** (second house second reading copy -- tan) **be concurred in.**

Signed: \_\_\_\_\_

*Representative Steve Gunderson, Chair*

To be carried by Representative Ross Fitzgerald

- END -

**Committee Vote:**

**Yes 9, No 6**

Fiscal Note Required ☐

SB0029001SC17697.hlc

4.7.21  
SR 9:43AM  
@



## HOUSE STANDING COMMITTEE REPORT

April 1, 2021

Page 1 of 2

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **Senate Bill 165** (second house second reading copy -- tan) **be concurred in as amended.**

Signed: \_\_\_\_\_

*Representative Steve Gunderson, Chair*

To be carried by Representative Steve Gunderson

### And, that such amendments read:

1. Page 9, line 28.

Strike: "and construction"

Insert: ", size, and location"

2. Page 9, line 28.

Following: "facilities"

Insert: "based on site characteristics"

3. Page 9, line 28 through page 10, line 4.

Strike: "for" on page 9, line 28 through "facilities" on page 10, line 4

4. Page 10, line 9 through line 13.

Strike: "(4)" on line 9 through "76-3-207" on line 13

Insert: "(4) The storm drainage review requirements of this chapter do not apply to divisions or parcels of land that are exempt from review under 76-3-207(1)(a), (1)(b), (1)(d), (1)(e), or (1)(f) that:

(a) are used for a single-family residential purpose; or

(b) include no more than 25% that is impervious"

5. Page 15.

Following: line 25

Insert: "COORDINATION SECTION. Section 8. Coordination instruction. If both Senate Bill No. 233 and

[this act] are passed and approved, then the change in this act in 76-3-504(1)(g)(iii)(A) regarding

regulations adopted by the board of environmental review must be deleted."

### Committee Vote:

Yes 9, No 6

Fiscal Note Required ☐

SB0165001SC17693.hlc

4.7.21  
DR 11:10 AM  
(E)

- END -



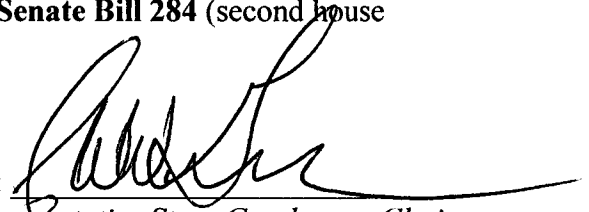
## HOUSE STANDING COMMITTEE REPORT

April 1, 2021

Page 1 of 1

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **Senate Bill 284** (second house second reading copy -- tan) **be concurred in.**

Signed: 

*Representative Steve Gunderson, Chair*

To be carried by Representative Ross Fitzgerald

- END -

**Committee Vote:**

**Yes 10, No 5**

Fiscal Note Required ☐

SB0284001SC17697.h1c

4-2-21  
12:44 PM  
(F)



## HOUSE STANDING COMMITTEE REPORT

April 1, 2021

Page 1 of 1

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **Senate Bill 302** (second house second reading copy -- tan) **be concurred in.**

Signed: \_\_\_\_\_

*Representative Steve Gunderson, Chair*

To be carried by Representative Kenneth Walsh

- END -

**Committee Vote:**

**Yes 15, No 0**

Fiscal Note Required ☐

SB0302001SC19685.hlc

4.7.21  
RP 9:45 AM  
(X)





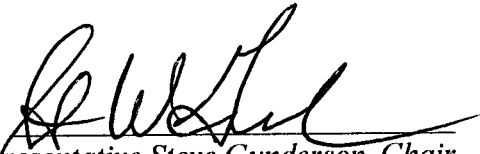
## HOUSE STANDING COMMITTEE REPORT

April 1, 2021

Page 1 of 2

Mr. Speaker:

We, your committee on **Natural Resources** recommend that **Senate Bill 358** (second house second reading copy -- tan) **be concurred in as amended.**

Signed:   
*Representative Steve Gunderson, Chair*

To be carried by Representative Rhonda Knudsen

### And, that such amendments read:

1. Title, line 8.  
Following: "75-5-105,"  
Strike: "75-5-301,"  
Following: "MCA;"  
Strike: "AND"
2. Title, line 9.  
Following: "MCA"  
Insert: "; REPEALING ARM 17.30.660; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE"
3. Page 1, line 13.  
Following: "**standards**"  
Strike: "-- **board of environmental review**"
4. Page 1, line 14 through page 3, line 3.  
Strike: page 1, line 14 through page 3, line 3 in their entirety  
Insert: "(1) By March 1, 2022, the department of environmental quality shall adopt rules related to narrative nutrient standards in consultation with the nutrient work group.  
(2) The rules shall provide for the development of an adaptive management program which provides for an incremental watershed approach for protecting and maintaining water quality, and that:  
(a) reasonably balances all factors impacting a water body;  
(b) prioritizes the minimization of phosphorus, taking into account site-specific conditions; and  
(c) identifies the appropriate response variables affected by nutrients and associated impact thresholds in accordance with the beneficial uses of the waterbody.  
(3) In developing the rules in subsection (2), the department shall consider options pertaining to whether the point source is new or existing and whether

### Committee Vote:

**Yes 10, No 5**

Fiscal Note Required ☐

SB0358001SC18718.hlc

4-7-21  
JR 11:11 AM  
(F)

the receiving water body is considered impaired or unimpaired."

5. Page 3, line 5 through line 7.

Following: "**department.**" on line 5

Strike: remainder of line 5 through line 7 in their entirety

Insert: "(1) Until final rules are adopted pursuant to [section 1], the department shall administer the discharge permitting program under 75-5-402 in a manner consistent with ARM 17.30.637 and the intent of [this act].

(2) Any nutrient standards variances currently authorized and effective are hereby authorized and effective under 75-5-320 until otherwise amended or repealed."

6. Page 3, line 16.

Following: "17.30.602"

Strike: "and 17.30.660"

7. Page 15, line 24 through page 17, line 27.

Strike: section 7 in its entirety

Renumber: subsequent sections

8. Page 20.

Following: line 5

Insert: "(u) discharges of total phosphorus or total nitrogen that do not:

(i) create conditions that are toxic or harmful to human, animal, plant, and aquatic life;

(ii) create conditions that produce undesirable aquatic life; or

(iii) cause measurable changes in aquatic life; and"

9. Page 20, line 6.

Following: "(u)"

Insert: "(v)"

10. Page 20, line 8 through line 10.

Strike: "i" on line 8 through "75-5-301(5)(c)" on line 10

11. Page 21.

Following: line 6

Insert: "NEW SECTION. Section 10. Repealer. ARM 17.30.660 is repealed."

Renumber: subsequent sections

12. Page 21.

Following: line 8

Insert: "NEW SECTION. Section 12. Saving clause. [This act] does not affect nutrient standards variances granted before [the effective date of this act], or rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act]."

Insert: "NEW SECTION. Section 13. {standard} Effective date. [This act] is effective on passage and approval."

- END -



*The Big Sky Country*

## MONTANA HOUSE OF REPRESENTATIVES

### NATURAL RESOURCES COMMITTEE

#### ROLL CALL VOTE

BILL NUMBER HB 648

DATE 4-1-2021

MOTION DO Pass As Amended

| NAME                       | YES | NO | PROXY |
|----------------------------|-----|----|-------|
| VICE CHAIR, RHONDA KNUDSEN | ✓   |    |       |
| VICE CHAIR, CURDY          |     | ✓  |       |
| REP. NOLAND                | ✓   |    | ✓     |
| REP. MALONE                | ✓   |    | ✓     |
| REP. FARRIS-OLSEN          |     | ✓  |       |
| REP. FIELDER               | ✓   |    |       |
| REP. GIST                  | ✓   |    | ✓     |
| REP. GALLOWAY              | ✓   |    | ✓     |
| REP. MARLER                |     | ✓  |       |
| REP. PUTNAM                | ✓   |    |       |
| REP. FRANCE                |     | ✓  |       |
| REP. FITZGERALD            | ✓   |    |       |
| REP. WEATHERWAX            |     | ✓  |       |
| REP. WALSH                 | ✓   |    |       |
| CHAIR, GUNDERSON           | ✓   |    |       |

15 MEMBERS



*The Big Sky Country*

## MONTANA HOUSE OF REPRESENTATIVES

### NATURAL RESOURCES COMMITTEE

#### ROLL CALL VOTE

BILL NUMBER SB 358

DATE 4-1-2021

MOTION Be Amended 358.1.1

| NAME                       | YES | NO | PROXY |
|----------------------------|-----|----|-------|
| VICE CHAIR, RHONDA KNUDSEN | ✓   |    |       |
| VICE CHAIR, CURDY          |     | ✓  |       |
| REP. NOLAND                | ✓   |    | ✓     |
| REP. MALONE                | ✓   |    | ✓     |
| REP. FARRIS-OLSEN          |     | ✓  |       |
| REP. FIELDER               | ✓   |    |       |
| REP. GIST                  | ✓   |    | ✓     |
| REP. GALLOWAY              | ✓   |    | ✓     |
| REP. MARLER                |     | ✓  |       |
| REP. PUTNAM                | ✓   |    |       |
| REP. FRANCE                | ✓   |    |       |
| REP. FITZGERALD            | ✓   |    |       |
| REP. WEATHERWAX            |     | ✓  |       |
| REP. WALSH                 | ✓   |    |       |
| CHAIR, GUNDERSON           | ✓   |    |       |

15 MEMBERS



*The Big Sky Country*

## MONTANA HOUSE OF REPRESENTATIVES

### NATURAL RESOURCES COMMITTEE

#### ROLL CALL VOTE

BILL NUMBER SB358

DATE 4-1-2021

MOTION Be Concurred As Amended

| NAME                       | YES | NO | PROXY |
|----------------------------|-----|----|-------|
| VICE CHAIR, RHONDA KNUDSEN | ✓   |    |       |
| VICE CHAIR, CURDY          |     | ✓  |       |
| REP. NOLAND                | ✓   |    | ✓     |
| REP. MALONE                | ✓   |    | ✓     |
| REP. FARRIS-OLSEN          |     | ✓  |       |
| REP. FIELDER               | ✓   |    |       |
| REP. GIST                  | ✓   |    | ✓     |
| REP. GALLOWAY              | ✓   |    | ✓     |
| REP. MARLER                |     | ✓  |       |
| REP. PUTNAM                | ✓   |    |       |
| REP. FRANCE                |     | ✓  |       |
| REP. FITZGERALD            | ✓   |    |       |
| REP. WEATHERWAX            |     | ✓  |       |
| REP. WALSH                 | ✓   |    |       |
| CHAIR, GUNDERSON           | ✓   |    |       |

15 MEMBERS



*The Big Sky Country*

## MONTANA HOUSE OF REPRESENTATIVES

### NATURAL RESOURCES COMMITTEE

#### ROLL CALL VOTE

BILL NUMBER SB 284

DATE 4-1-2021

MOTION Be Concurred In

| NAME                       | YES | NO | PROXY |
|----------------------------|-----|----|-------|
| VICE CHAIR, RHONDA KNUDSEN | ✓   |    |       |
| VICE CHAIR, CURDY          |     | ✓  |       |
| REP. NOLAND                | ✓   |    | ✓     |
| REP. MALONE                | ✓   |    | ✓     |
| REP. FARRIS-OLSEN          |     | ✓  |       |
| REP. FIELDER               | ✓   |    |       |
| REP. GIST                  | ✓   |    | ✓     |
| REP. GALLOWAY              | ✓   |    | ✓     |
| REP. MARLER                |     | ✓  |       |
| REP. PUTNAM                | ✓   |    |       |
| REP. FRANCE                |     | ✓  |       |
| REP. FITZGERALD            | ✓   |    |       |
| REP. WEATHERWAX            |     | ✓  |       |
| REP. WALSH                 | ✓   |    |       |
| CHAIR, GUNDERSON           | ✓   |    |       |

15 MEMBERS



*The Big Sky Country*

# MONTANA HOUSE OF REPRESENTATIVES

## NATURAL RESOURCES COMMITTEE

### ROLL CALL VOTE

BILL NUMBER HB 1095

DATE 4-1-2021

MOTION Be Tabled

| NAME                       | YES | NO | PROXY |
|----------------------------|-----|----|-------|
| VICE CHAIR, RHONDA KNUDSEN |     | ✓  |       |
| VICE CHAIR, CURDY          | ✓   |    |       |
| REP. NOLAND                |     | ✓  | ✓     |
| REP. MALONE                |     | ✓  | ✓     |
| REP. FARRIS-OLSEN          | ✓   |    |       |
| REP. FIELDER               | ✓   |    |       |
| REP. GIST                  |     | ✓  | ✓     |
| REP. GALLOWAY              |     | ✓  | ✓     |
| REP. MARLER                | ✓   |    |       |
| REP. PUTNAM                |     | ✓  |       |
| REP. FRANCE                | ✓   |    |       |
| REP. FITZGERALD            |     | ✓  |       |
| REP. WEATHERWAX            | ✓   |    |       |
| REP. WALSH                 |     | ✓  |       |
| CHAIR, GUNDERSON           |     | ✓  |       |

15 MEMBERS



*The Big Sky Country*

## MONTANA HOUSE OF REPRESENTATIVES

### NATURAL RESOURCES COMMITTEE

#### ROLL CALL VOTE

BILL NUMBER HB 695

DATE 4-1-2021

MOTION DO Pass

| NAME                       | YES | NO | PROXY |
|----------------------------|-----|----|-------|
| VICE CHAIR, RHONDA KNUDSEN | ✓   |    |       |
| VICE CHAIR, CURDY          |     | ✓  |       |
| REP. NOLAND                | ✓   |    | ✓     |
| REP. MALONE                |     | ✓  | ✓     |
| REP. FARRIS-OLSEN          |     | ✓  |       |
| REP. FIELDER               |     | ✓  |       |
| REP. GIST                  | ✓   |    | ✓     |
| REP. GALLOWAY              | ✓   |    | ✓     |
| REP. MARLER                |     | ✓  |       |
| REP. PUTNAM                | ✓   |    |       |
| REP. FRANCE                |     | ✓  |       |
| REP. FITZGERALD            | ✓   |    |       |
| REP. WEATHERWAX            |     | ✓  |       |
| REP. WALSH                 | ✓   |    |       |
| CHAIR, GUNDERSON           | ✓   |    |       |

15 MEMBERS





*The Big Sky Country*

## MONTANA HOUSE OF REPRESENTATIVES

### NATURAL RESOURCES COMMITTEE

#### ROLL CALL VOTE

BILL NUMBER SB 29

DATE 4-1-2021

MOTION Reconsider Action

| NAME                       | YES | NO | PROXY |
|----------------------------|-----|----|-------|
| VICE CHAIR, RHONDA KNUDSEN |     | ✓  |       |
| VICE CHAIR, CURDY          | ✓   |    |       |
| REP. NOLAND                |     | ✓  | ✓     |
| REP. MALONE                | ✓   |    | ✓     |
| REP. FARRIS-OLSEN          | ✓   |    |       |
| REP. FIELDER               |     | ✓  |       |
| REP. GIST                  |     | ✓  | ✓     |
| REP. GALLOWAY              |     | ✓  | ✓     |
| REP. MARLER                | ✓   |    |       |
| REP. PUTNAM                | ✓   |    |       |
| REP. FRANCE                | ✓   |    |       |
| REP. FITZGERALD            | ✓   |    |       |
| REP. WEATHERWAX            |     | ✓  |       |
| REP. WALSH                 | ✓   |    |       |
| CHAIR, GUNDERSON           | ✓   |    |       |

15 MEMBERS



*The Big Sky Country*

# MONTANA HOUSE OF REPRESENTATIVES

## NATURAL RESOURCES COMMITTEE

### ROLL CALL VOTE

BILL NUMBER SB 29

DATE 4-1-2021

MOTION Be concurred In

| NAME                       | YES | NO | PROXY |
|----------------------------|-----|----|-------|
| VICE CHAIR, RHONDA KNUDSEN |     | ✓  |       |
| VICE CHAIR, CURDY          | ✓   |    |       |
| REP. NOLAND                |     | ✓  | ✓     |
| REP. MALONE                | ✓   |    | ✓     |
| REP. FARRIS-OLSEN          | ✓   |    |       |
| REP. FIELDER               |     | ✓  |       |
| REP. GIST                  |     | ✓  | ✓     |
| REP. GALLOWAY              |     | ✓  | ✓     |
| REP. MARLER                | ✓   |    |       |
| REP. PUTNAM                | ✓   |    |       |
| REP. FRANCE                | ✓   |    |       |
| REP. FITZGERALD            | ✓   |    |       |
| REP. WEATHERWAX            |     | ✓  |       |
| REP. WALSH                 | ✓   |    |       |
| CHAIR, GUNDERSON           | ✓   |    |       |

15 MEMBERS



*The Big Sky Country*

## MONTANA HOUSE OF REPRESENTATIVES

### NATURAL RESOURCES COMMITTEE

#### ROLL CALL VOTE

BILL NUMBER SB 165

DATE 4-1-2021

MOTION Reconsider Action

| NAME                       | YES | NO | PROXY |
|----------------------------|-----|----|-------|
| VICE CHAIR, RHONDA KNUDSEN | ✓   |    |       |
| VICE CHAIR, CURDY          |     | ✓  |       |
| REP. NOLAND                | ✓   |    | ✓     |
| REP. MALONE                | ✓   |    | ✓     |
| REP. FARRIS-OLSEN          |     | ✓  |       |
| REP. FIELDER               | ✓   |    |       |
| REP. GIST                  | ✓   |    | ✓     |
| REP. GALLOWAY              | ✓   |    | ✓     |
| REP. MARLER                |     | ✓  |       |
| REP. PUTNAM                |     | ✓  |       |
| REP. FRANCE                |     | ✓  |       |
| REP. FITZGERALD            | ✓   |    |       |
| REP. WEATHERWAX            |     | ✓  |       |
| REP. WALSH                 | ✓   |    |       |
| CHAIR, GUNDERSON           | ✓   |    |       |

15 MEMBERS



*The Big Sky Country*

## MONTANA HOUSE OF REPRESENTATIVES

### NATURAL RESOURCES COMMITTEE

#### ROLL CALL VOTE

BILL NUMBER SB 1165

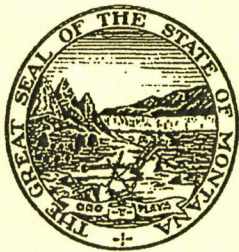
DATE 4-1-2021

MOTION Be concurred In

| NAME                       | YES | NO | PROXY |
|----------------------------|-----|----|-------|
| VICE CHAIR, RHONDA KNUDSEN | ✓   |    |       |
| VICE CHAIR, CURDY          |     | ✓  |       |
| REP. NOLAND                | ✓   |    | ✓     |
| REP. MALONE                | ✓   |    | ✓     |
| REP. FARRIS-OLSEN          |     | ✓  |       |
| REP. FIELDER               | ✓   |    |       |
| REP. GIST                  | ✓   |    | ✓     |
| REP. GALLOWAY              | ✓   |    | ✓     |
| REP. MARLER                |     | ✓  |       |
| REP. PUTNAM                |     | ✓  |       |
| REP. FRANCE                |     | ✓  |       |
| REP. FITZGERALD            | ✓   |    |       |
| REP. WEATHERWAX            |     | ✓  |       |
| REP. WALSH                 | ✓   |    |       |
| CHAIR, GUNDERSON           | ✓   |    |       |

15 MEMBERS





*The Big Sky Country*

# MONTANA HOUSE OF REPRESENTATIVES

## AUTHORIZED COMMITTEE PROXY 67<sup>TH</sup> LEGISLATIVE SESSION

I request to be excused from the Natural Resources Committee.

I desire to leave my proxy vote with Rep. Rhonda Knudsen.

PLEASE USE PEN

| BILL   | MOTION<br>(Include AMENDMENT #) | AYE | NO |
|--------|---------------------------------|-----|----|
| HB 648 | Be Amended 648.1.1              | X   |    |
| HB 648 | DO Pass As Amended              | X   |    |
| SB 358 | Be Amended 358.1.1              | X   |    |
| SB 358 | Be concurred In<br>As Amended   | X   |    |
| SB 284 | Be Concurred In                 | X   |    |
| HB 695 | Be Tabled                       |     | X  |
| HB 695 | DO Pass                         | X   |    |
| SB 29  | Reconsider Action               |     | X  |
| SB 29  | Be concurred In                 |     | X  |
| SB 165 | Reconsider Action               | X   |    |
| SB 165 | Be concurred In                 | X   |    |
| SB 302 | Be concurred In                 | X   |    |

| BILL | MOTION<br>(Include AMENDMENT #) | AYE | NO |
|------|---------------------------------|-----|----|
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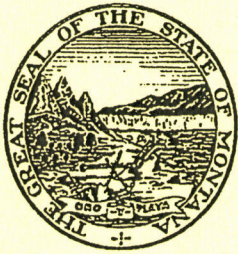
I authorize my vote to be matched with that of Rep. Rhonda Knudsen  
for any amendments proposed on this date.

Rep. Mark Noland  
(Signature)

Rep. Noland  
(Print Name)

4-1-2021  
(Meeting Date)





*The Big Sky Country*

MONTANA HOUSE OF REPRESENTATIVES  
AUTHORIZED  
COMMITTEE PROXY  
67<sup>TH</sup> LEGISLATIVE SESSION

I request to be excused from the Natural Resources Committee.

I desire to leave my proxy vote with Rep. Knudsen.

PLEASE USE PEN

| BILL            | MOTION<br>(Include AMENDMENT #) | AYE | NO |
|-----------------|---------------------------------|-----|----|
| HB648           | Be Amended 648.1.1              | X   |    |
| HB648           | DO Pass As Amended              | X   |    |
| SB358           | Be Amended 358.1.1              | X   |    |
| SB 358          | Be concurred in<br>As Amended   | X   |    |
| SB284           | Be concurred in                 | X   |    |
| HB695           | Be Tabled                       |     | X  |
| HB695           | DO Pass                         |     | X  |
| <del>SB29</del> | <del>Reconsider Action</del>    |     |    |
| SB29            | Reconsider Action               | X   |    |
| SB29            | Be concurred in                 | X   |    |
| SB165           | Reconsider Action               | X   |    |
| SB165           | Be concurred in                 | X   |    |

| BILL  | MOTION<br>(Include AMENDMENT #) | AYE | NO |
|-------|---------------------------------|-----|----|
| SB302 | Be concurred in                 | X   |    |
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I authorize my vote to be matched with that of Rep. Knudsen  
for any amendments proposed on this date.

Rep. [Signature]  
(Signature)

Rep. Malone  
(Print Name)

4-1-2021  
(Meeting Date)





*The Big Sky Country*

MONTANA HOUSE OF REPRESENTATIVES  
AUTHORIZED  
COMMITTEE PROXY  
67<sup>TH</sup> LEGISLATIVE SESSION

I request to be excused from the Natural Resources Committee.

I desire to leave my proxy vote with Rep. Rhonda Kuvasen.

PLEASE USE PEN

| BILL   | MOTION<br>(Include AMENDMENT #) | AYE | NO | BILL | MOTION<br>(Include AMENDMENT #) | AYE | NO |
|--------|---------------------------------|-----|----|------|---------------------------------|-----|----|
| HB 648 | Be Amended 648.1.1              | X   |    |      |                                 |     |    |
| HB 648 | DO PASS AS Amended              | X   |    |      |                                 |     |    |
| SB 358 | Be Amended 358.1.1              | X   |    |      |                                 |     |    |
| SB 358 | Be Concurred IN AS Amended      | X   |    |      |                                 |     |    |
| SB 284 | Be Concurred IN                 | X   |    |      |                                 |     |    |
| HB 695 | Be Tabled                       |     | X  |      |                                 |     |    |
| HB 695 | DO PASS                         | X   |    |      |                                 |     |    |
| SB 29  | Reconsider Action               |     | X  |      |                                 |     |    |
| SB 29  | Be Concurred IN                 |     | X  |      |                                 |     |    |
| SB 165 | Reconsider Action               | X   |    |      |                                 |     |    |
| SB 165 | Be Concurred IN                 | X   |    |      |                                 |     |    |
| SB 302 | Be Concurred IN                 | X   |    |      |                                 |     |    |

I authorize my vote to be matched with that of Rep. Rhonda Kuvasen  
for any amendments proposed on this date.

Rep. \_\_\_\_\_

(Signature)

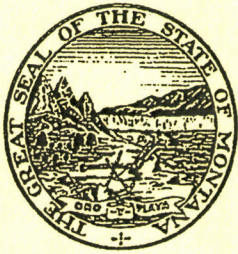
Rep. Gist

(Print Name)

4-1-2021

(Meeting Date)





*The Big Sky Country*

MONTANA HOUSE OF REPRESENTATIVES  
AUTHORIZED  
COMMITTEE PROXY  
67<sup>TH</sup> LEGISLATIVE SESSION

I request to be excused from the Natural Resources Committee.

I desire to leave my proxy vote with Rep. Rhonda Knudsen.

PLEASE USE PEN

| BILL              | MOTION<br>(Include AMENDMENT #) | AYE | NO           |
|-------------------|---------------------------------|-----|--------------|
| HB 648            | Be Amended 648.1.1              | X   |              |
| HB 648            | Do Pass As Amended              | X   |              |
| SB 358            | Be Amended 358.1.1              | X   |              |
| SB 358            | Be concurred IN As Amended      | X   |              |
| SB 284            | Be Concurred IN                 | X   |              |
| HB 695            | Be Tabled                       |     | X            |
| HB 695            | Do Pass                         | X   |              |
| SB 29             | Reconsider Action               |     | X            |
| <del>HB 695</del> | <del>Do Pass</del>              |     | <del>X</del> |
| SB 29             | Be concurred IN                 |     | X            |
| SB 165            | Reconsider Action               | X   |              |
| SB 165            | Be Concurred IN                 | X   |              |

| BILL   | MOTION<br>(Include AMENDMENT #) | AYE | NO |
|--------|---------------------------------|-----|----|
| SB 302 | Be concurred IN                 | X   |    |
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I authorize my vote to be matched with that of Rep. Rhonda Knudsen  
for any amendments proposed on this date.

Rep.

(Signature)

Rep. Galloway  
(Print Name)

(Meeting Date)

4-1-2021



**MONTANA House of Representatives  
Visitors Register  
HOUSE NATURAL RESOURCES COMMITTEE**

**Thursday, April 1, 2021**

**Sponsor: No Bills to be Heard**

**PLEASE PRINT**

[illegible]

**Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.**